



Governor's Office of Storm Recovery

POLICY MANUAL

NY Rising Community Reconstruction Program

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April 15, 2021
Version 3.2

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The policies stated in this manual are current as of April 15, 2021. This manual represents the current version of the Governor's Office of Storm Recovery's (GOSR) policy which shall provide general guidance for the operation of the GOSR program. All policy manuals will be reviewed periodically and will be updated. GOSR will use its best efforts to keep all its Policy Manuals current. Therefore, you are strongly urged to visit our website www.stormrecovery.ny.gov or to contact the info@stormrecovery.ny.gov to ensure that you have the latest version of GOSR's policies. There may be times, however, when a policy will change before manual is revised.

POLICY MANUAL

NY Rising Community Reconstruction Program

Version Control

Version Number	Date Revised	Description of Revisions
1.0	April 17, 2015	Initial version of Community Reconstruction Policy Manual developed for interested public, subrecipients, NYRCR staff, and GOSR-wide staff.
1.1	August 3, 2015	Updated Direct Selection; revised Subrecipient Agreement, Application Acceptance, and Audit Requirements; updated cover page.
1.2	December 7, 2015	Revised Development and Consideration of Projects, Tie to the Storm, and Duplication of Benefits; updated cover page.
2.0	April 26, 2016	New sections: public engagement in implementation, NYRCR Program compliance checks, order of assistance, national objective and Office of Diversity and Civil Rights. Additions to existing sections: sub-subrecipients, amendments to subrecipient agreements, indirect project costs for non-profits running public service programs, waiver of additional insurance requirements of professional services contracts under specific conditions, NFIP insurance requirements, and examples of project delivery and administration costs. Other minor edits throughout and updated pre-application report template and application template.
3.0	September 5, 2017	Revised entire manual. Added the following sections: Project Management Agreements (PMAs) and Program Participants, Documenting Project Changes, Risk Assessment, Audit Requirements (MCD), Audit Requirements (NYRCR), Canceled Projects, Subrecipient Switch, and Subrecipient Closeout. Major edits were made to the following sections: Subrecipient Agreements, Pre-Application, Application, Environmental Requirements, Project Closeout, Monitoring and Compliance Department (MCD), Timely Expenditure of Funds, Duplication of Benefits, Program Income, Financial Management, Insurance and Property Management, Acquisition of Real Property, Section 3, Minority-and/or Women-Owned Business Enterprises, Fair Housing, Office of Diversity and Civil Rights, Project Delivery and Project Administration Costs, Procurement, Record Keeping, and Definitions. Updates made throughout the manual include: removing the Managing Director role and replacing with new responsible entity.

3.1	December 3, 2020	Revised entire manual. Added the following sections: Resilience Performance Standards (3.13.5), Green Building Standards (3.13.6), Flood Insurance and Substantial Improvement (3.13.10), Recapture (3.16), and Records Retention (3.18). Major edits were made to the following sections: Planning Process (1.1), Implementation Process (1.2), Selection Criteria (3.3.1), Initial Assessment (3.3.2), Application Acceptance (3.6.2), Application Approval (3.6.3), Documenting Project Changes (3.6.4), Environmental Review (3.8), Subrecipient Payment (3.9), Timely Expenditure of Funds (3.13.1), Order of Assistance (3.13.2), Duplication of Benefits (3.13.3), National Objective (3.13.4), Program Income (3.13.7), Financial Management (3.13.8), Flood Insurance and Substantial Improvement (3.13.10), Insurance and Property Management (3.13.11), Project Delivery and Project Administration Costs (3.13.16), Procurement (3.13.17), Canceled Projects (3.13.18), and Subrecipient Closeout (3.17). Additionally Program Administrative Requirements and Cross-Cutting Federal Regulations (Exhibit 1) was updated to conform with language in the rest of the GOSR Policy manuals.
3.2	April 15, 2021	Revised Exhibit 1 Record Keeping, Retention and File Management

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Introduction

In response to the damage caused by Superstorm Sandy and other natural disasters that occurred across the nation in 2011, 2012, and 2013, the U.S. Congress appropriated \$16 billion in Federal funds for the Community Development Block Grant-Disaster Recovery (CDBG-DR) program through Public Law 113-2. Enacted on January 29, 2013, this law stipulates that these funds are to be used for the following recovery efforts:

“...necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a major disaster declared pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013, for activities authorized under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.): Provided, that funds shall be awarded directly to the State or unit of general local government as a grantee at the discretion of the Secretary of Housing and Urban Development...”

In response to this funding commitment, the State of New York developed the NY Rising Community Reconstruction (NYRCR) Program along with several other disaster recovery initiatives as outlined in the [State of New York Action Plan for Community Development Block Grant Program Disaster Recovery](#) (Action Plan).

Oversight of Storm Recovery

Governor Andrew M. Cuomo established the Governor’s Office of Storm Recovery (GOSR), a division of the Housing Trust Fund Corporation (HTFC) in June 2013 to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State. HTFC is a component of New York State Homes and Community Renewal (HCR), a unified leadership platform, encompassing a variety of New York State agencies and public benefit corporations involved in the provision of housing and community renewal. GOSR was formed to direct the administration of federal CDBG-DR funds. GOSR works in close collaboration with local leaders to respond to communities’ most urgent storm recovery needs while also identifying long-term and innovative solutions to strengthen the State’s infrastructure and critical systems.

Manual Overview

This Manual lays out the policies of the NYRCR Program. GOSR-wide policies are included in [Exhibit 1](#). The Manual’s intended audience is the interested public, subrecipients, GOSR staff, and other agency staff. The NYRCR Program Procedure Manual provides in-depth information on implementing the procedures associated with the policies outlined in this Manual. GOSR staff and consultants utilize the Policy and Procedure Manuals to provide Technical Assistance (TA) to subrecipients to ensure compliance in key areas including: financial management, procurement, Equal Opportunity, Section 3, environmental review, relocation and acquisition, insurance and

property management, construction, record keeping, reporting, single audit, reimbursements and monitoring.

Meeting CDBG-DR Program Goals and National Objectives

In support of HUD’s recovery objectives, New York State has specifically designed its storm recovery programs to help impacted residents and communities recover from damage inflicted by the storms of 2011 and 2012. As expressed in the Federal Housing and Community Development Act of 1974 (HCDA), the primary objective of the general CDBG program is “the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of Low-and Moderate-Income (LMI).” CDBG-DR funding appropriated in response to disasters must meet the general goals of the CDBG program.

All CDBG-DR funded activities must meet at least one of the three National Objectives defined in the authorizing statute of the CDBG program:

- Benefit LMI persons;
- Aid in the prevention or elimination of slums or blight (Slum and Blight);
- Meet a need having a particular urgency (Urgent Need).

All activities funded through the NYRCR Program, unless the requirement is waived by HUD, are required to meet one of the National Objectives.

Fulfilling Principles Established by New York State’s Action Plan

The NYRCR Program is expected to encourage investment in storm-impacted regions by ensuring that communities are not just rebuilt, but also become safer and more resilient—especially for those areas where there is a high risk of future flooding. The Program aims to restore the vibrancy of New York State’s disaster-impacted communities and enhance the quality of life. The NYRCR Program is also focused on helping communities develop and implement strategies that facilitate the coordination of NYRCR Program funding with other federal, State, and local community development resources.

The NYRCR Program and the other activities outlined in the Action Plan are based on six key principles:

1. ***Building back better and smarter*** – As New Yorkers work to repair the severe damage caused by Superstorm Sandy and other storm events, the State uses the recovery programs as an opportunity to ensure that damaged buildings are not simply restored to their pre-storm condition or replaced with the same kind of structures. Instead, New York State invests in additional mitigation measures to prevent similar damage from occurring in the future.
2. ***State-led, community-driven recovery*** – New York State is collaborating closely with local governments and other organizations to ensure a coordinated and holistic response, while looking to individual communities to develop forward-looking local recovery plans that meet their specific needs.

3. ***Recovery from Irene and Lee*** – The recovery efforts also extend to those communities still recovering from Hurricane Irene and Tropical Storm Lee.
4. ***Leveraging private dollars*** – New York State undertakes programs that will help unlock capital markets and increase the amount of low-interest financing of key projects by reducing the risk for private sector lenders.
5. ***Spending accountability and transparently*** – New York State implements rigorous controls and checks to ensure funds are spent responsibly and in compliance with federal and State guidelines.
6. ***Urgency in action*** – Recovery is a long-term endeavor, but people need immediate help. The projects and programs presented in the Action Plan are shaped to achieve the fastest delivery and best support possible, while working within the parameters of the HUD guidelines.

Outreach and Citizen Participation Plan

Outreach

Public participation is a cornerstone of the NYRCR Program. In the Planning Phase, Planning Committees, composed of community members, engaged with their broader public to encourage participation in the planning process, solicited feedback and ideas for innovative projects, and built support for implementing NYRCR Plans. In the Implementation Phase, public engagement continues, as discussed in [Section 3.7](#).

To achieve these goals, every Planning Committee planned a public outreach strategy. At a minimum, Planning Committees sought public input at key milestones in the planning process through four public engagement events, such as an open house, workshop, or public information session. Planning Committee members worked to conduct outreach to traditionally underrepresented populations and included them in the planning process, from immigrant populations to high school students. Planning Committee members also made presentations at senior housing complexes, faith-based organizations, schools, community boards, and Chambers of Commerce.

Across the State, more than 650 New Yorkers represented their communities by serving on Planning Committees. Over 650 Planning Committee meetings were held during which Planning Committee members worked with the State's team to develop community NYRCR Plans that identified opportunities to make their communities more resilient. All meetings were open to the public. More than 250 public engagement events attracted thousands of community members, who provided feedback on the planning process and resulting proposals. NYRCR Program staff work to engage the Planning Committee members and the community in implementation as appropriate.

All Planning Committee meetings were publicized using a variety of mechanisms, including the following:

- Media advisories;
- Flyers and posters hung in public locations;
- Radio announcements and print media; and
- Social media.

Where necessary, Planning Committee meetings were advertised in various languages – Spanish, Russian, Mandarin, Urdu, and Haitian Creole, as applicable – to ensure those with limited English proficiency (LEP) were informed. Translators and sign language interpreters for the hearing impaired were available at public engagement events as needed. Persons with disabilities, those with LEP, and others who needed documents presented in a different format were encouraged to contact the State Recovery Hotline at **1-855-NYS-SANDY** for assistance with obtaining information in an accessible format.

Additionally, GOSR developed a website to post progress, meeting schedules and relevant documents (<https://stormrecovery.ny.gov/community-reconstruction-program>). The public could also use the website to comment on issues they believed should be addressed in NYRCR Plans.

The NYRCR Program has held a series of conferences throughout the Program to highlight and advance the work being undertaken in NY Rising Communities. As of May 2017, there have been three major NYRCR conferences in Albany and one in New York City. The first provided Planning Committee members with access to experts on resilience, disaster recovery, and community planning; the second showcased the content of conceptual planning documents developed by the first round of NYRCR communities; the third showcased the completed NYRCR Plans and welcomed the second round of NYRCR Planning Committee members, and the fourth showcased the Final Plans from Round II (see [Section 1.1](#)).

Citizen Participation Plan

The New York State Citizen Participation Plan (CPP) provides New York citizens an opportunity to participate in the planning, implementation, and assessment of the State's CDBG-DR recovery program. The Plan sets forth policies and procedures for citizen participation, in accordance with federal regulations, which are designed to maximize the opportunity for citizen involvement in the community development process. The State has attempted to provide all citizens with the opportunity to participate, with emphasis on LMI persons, individuals with LEP, and individuals requiring special accommodations due to disabilities.

The State's CPP ensures that there is reasonable and timely access for public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG-DR grant funds. In following HUD's guidance in the November 18, 2013 Federal Register Notice (FRN) (FR-5696-N-06), substantial Action Plan Amendments include a thirty-

day public comment period with at least one public hearing. The State has, and will continue to, coordinate outreach meetings with State entities, local governments, non-profits, private sector, and involved associations. The State invites public comments to the Action Plan and Substantial Amendments as required by HUD. These documents are posted prominently and can be accessed on GOSR's official website. The State uses means such as press releases, posting notices on the New York State Governor's website and/or GOSR's website, to maximize access of program information to the impacted citizens and businesses.

The New York CPP for CDBG-DR Sandy, Irene, and Lee Recovery is attached as [Exhibit 2](#) to this Manual.

1.0 NY Rising Community Reconstruction Program

The NYRCR Program is a combination of bottom-up community participation and technical expertise provided by the State. This approach recognizes that community members are best positioned to assess the needs and opportunities of the places where they live and work. The Program strives to empower the State's most impacted communities to develop thorough and implementable reconstruction plans with the ultimate goal of building physically, socially, and economically resilient and sustainable communities. The NYRCR Program is comprised of two phases, a planning phase and an implementation phase. The Program was rolled out to participating communities in two rounds, referred to as Round I and Round II.

1.1 Planning Process

Launched in the summer of 2013 and completed in March 2014, Round I of the NYRCR Program planning encompassed 45 Planning Areas, composed of 97 communities. In January 2014, Governor Cuomo announced Round II of the planning process, serving an additional 22 storm-impacted communities. Four of these communities were absorbed into existing Round I NYRCR Planning Areas, while 18 formed into 16 new NYRCR Planning Areas. Between Rounds I and II, there are 61 NYRCR Planning Areas, comprising 119 communities. The NYRCR Planning Areas can be found on the NYRCR Program's website: [NYRCR Planning Areas](#).

In July 2013, prior to the beginning of the Round I planning process, the State identified 102 communities as eligible to participate in the NYRCR Program. Communities were identified using the Federal Emergency Management Agency (FEMA) Individual Assistance (IA) Full Verified Loss (FVL) claims obtained in March 2013. Per capita damage claims, identified through 2010 Census data, were also used to better understand damage in smaller communities, as their need may not have been demonstrated fully by the FEMA IA FVL data alone. Below is the specific methodology used to identify communities for inclusion in the NYRCR Program by region:

- Long Island
 - Localities on Long Island were identified at the village or Census-designated place (CDP) level and assessed for total FEMA IA FVL damage. All localities that had \$2.5 million in total FEMA IA FVL claims or more were determined eligible for the NYRCR Program. In cases where small localities within townships were identified as having similar needs and would function better together, they were grouped together and considered in aggregate for the purpose of determining whether they met the FEMA IA FVL threshold for inclusion in the program. Census data from 2010 was also used to identify localities that suffered high claims per capita relative to other localities within the State. In some cases, localities with claims below the FEMA IA FVL \$2.5 million threshold were included because of their high levels of per capita damage.

- New York City
 - Neighborhoods initially identified as areas of focus in New York City’s Sandy Initiative for Rebuilding and Resiliency (SIRR) Report were selected as potential candidates and then evaluated for the amount of damage. The minimum threshold for total FEMA IA FVL claims was set at \$2.5 million. In January 2014, an additional six neighborhoods not identified in the SIRR Report were added to the NYRCR Program because they met the FEMA IA FVL threshold.
- Upstate
 - All localities with FEMA IA FVL claims above \$1.5 million were selected. Census data from 2010 was also used to identify localities that suffered high claims per capita relative to other localities within the State. In some cases, localities with claims below the FEMA IA FVL threshold of \$1.5 million were included because of their high levels of per capita damage or because of the extensive damage to public facilities and infrastructure or other extenuating circumstances in the community.

The Round I and Round II planning processes were substantially similar, though Round I’s planning process lasted roughly eight months and Round II’s roughly seven months. In addition, a Conceptual Plan, an interim document that informed the final NYRCR Plan, was required for each Round I Planning Area, but not for Round II Planning Areas. The State waived this requirement, as it did not add substantial value to the final product.

Planning Committees, made up of local residents, business owners, and civic leaders, supported by NYRCR Program staff and outside planning firms, met regularly and hosted public events at key milestones during the planning process. They undertook, with NYRCR Program staff and outside planning firm support, detailed analyses to identify the community’s assets, including those damaged and those not damaged in the covered storms. Through the planning process, NYRCR Planning Committees identified and focused on investments that would improve a community’s resilience while maximizing social and economic benefits.

The planning process culminated in a final planning document, the Planning Committee’s NYRCR Plan, for each Planning Area. These documents proposed reconstruction strategies related to recovering from impacts of Hurricane Irene, Tropical Storm Lee, and Superstorm Sandy through community planning and capacity building, economic development, health and social services, housing, infrastructure, and natural and cultural resources. Building upon these strategies, the NYRCR Plans included detailed profiles of projects that could be implemented with Planning Area’s allotment or with other funds.

1.2 Implementation Process

The State has allotted between \$3 million and \$28 million to each NYRCR Planning Area for the implementation of eligible projects proposed in each NYRCR Plan. In implementation, the State chooses projects from the Planning Committee’s NYRCR Plan

and awards funding for the implementation of projects on a staggered basis. To identify which projects to advance, NYRCR Program staff works with Planning Committees, local governments, and other entities.

Each project is implemented by a subrecipient, a local government, State agency, or eligible non-profit organization that partners with GOSR for the completion of the project. Subrecipients are selected either directly by GOSR or through a competitive process. After a subrecipient is chosen, the entity and GOSR enter into a subrecipient agreement (SRA). This agreement enables the transfer of CDBG-DR funds to the subrecipient and ensures that the subrecipient understands both CDBG-DR and GOSR requirements.

A pre-application report is undertaken by NYRCR Program staff. The pre-application determines whether the project may advance to the full application; accepted pre-applications move to full applications. GOSR works with the subrecipient to ensure that the project is eligible for CDBG-DR funding. Environmental review begins during the application phase. At periodic intervals, NYRCR Program staff provide TA in all areas of CDBG-DR compliance including, but not limited to, procurement, diversity requirements, labor requirements, relocation and acquisition, financial management, and record-keeping. Following necessary approvals from GOSR, subrecipients may advertise for bids and commence project implementation. CDBG-DR regulations require GOSR's monitoring of CDBG-DR grantees throughout the construction phase, if applicable, in order to ensure subrecipients' compliance with key elements. Project closeout is requested by the subrecipient when final payment has been requested, approved work has been finished, and any other responsibilities detailed in the SRA have been fulfilled (see [Section 3.10](#)).

To encourage impactful NYRCR Plans, NYRCR Planning Committees were strongly encouraged to identify projects that go well beyond the CDBG-DR implementation funding available. The NYRCR Program is committed to identifying additional sources of capital and working with the NYRCR Communities to help leverage the optimal capital allotment for their projects. For example, projects included in NYRCR Plans or located in NYRCR Planning Areas received special consideration in the 2014, 2015, and 2016 New York State Consolidated Funding Application. Affordable housing projects included in NYRCR Plans or located in NYRCR Communities received special consideration in a round of affordable housing funding made available by GOSR and HCR. In addition, there are many different sources of resiliency funding and finance available that communities can and should leverage for project implementation.

2.0 Planning Policies

2.1 Selection of Planning Committee Members

NYRCR Program staff identified potential Planning Committee members through consultations with established local leaders, community organizations, and municipal officials. Committee members were selected with an eye toward creating Planning Committees representative of the community as a whole. Also considered were issues of geography, diversity, and the necessity to ensure participation of historically disengaged groups were also considered. NYRCR Program staff looked to fill potential gaps in the voices represented on each Planning Committee and strived to balance these deficiencies by identifying additional members.

Planning Committees were led by one to three chairs, selected by NYRCR Program staff in consultation with the communities. For many Planning Committees, co-chairs were critical for communicating information from NYRCR Program staff to the Planning Committee members. Planning Committee members were not paid. Members included leaders in civic associations, business groups, and non-profits, and also included representatives of vulnerable populations. In some instances, a municipal representative or elected official served on a Planning Committee. In these cases, the elected official was a non-voting member. Planning Committees generally consisted of approximately 9-15 members.

2.2 Planning Committee Members' Code of Conduct

Planning Committee Members' behavior was governed by the Program's Code of Conduct ([Exhibit 3](#)). The Code covers such issues as the Planning Committee Members' obligation to:

- Always act in the public interest;
- Not disclose confidential information; and
- Disclose all potential and actual conflicts of interest.

Planning Committee members acknowledged in writing that they read and understood the Program's Code of Conduct. Planning Committee members were required to disclose to the NYRCR Program Ethics Officer any real or potential conflicts of interest that might arise from a project being included or not included in a NYRCR Plan.

Near the end of the planning process, Planning Committee members voted on which projects to include in their Plans. After disclosing real or potential conflicts, Committee members either voluntarily disqualified themselves from voting on a project or requested an ethics opinion from the Ethics Officer on whether they should vote. Where necessary, the Ethics Officer advised Planning Committee members to recuse themselves from voting.

2.3 Selection of Planning Firms

The local knowledge of Planning Committee members was enhanced by the expertise of

State staff, as well as top consulting firms in community planning, urban design and economic development. Planning firms were hired to assist communities throughout every step of the planning process. Planning firms organized and facilitated Planning Committee meetings, conducted appropriate research, provided innovative options for addressing community recovery needs, assisted with public outreach events, and undertook the rigorous analytical work required by the NYRCR Program such as developing an asset inventory, risk assessment, and cost-benefit analysis.

Planning firms selected in Round I were evaluated based on criteria identified in the request for proposals (RFP). Firms receiving between 80 to 100 points were considered qualified for assignment to one or more NYRCR Planning Committees. The RFP listed the following criteria:

1. Experience and Capacity,
2. Proposed Cost Structure,
3. Technical Approach, and
4. Innovative Practices.

Chosen firms were subjected to a matching process to assign firms to Planning Committees that included regional context, experience and background, technical approach and functional expertise. Following the matching process, HTFC executed contracts to provide planning, technical, and professional services to Planning Committees. The contracts were executed pursuant to the Public Authorities Law Section 2879, HTFC procurement guidelines, and applicable Federal requirements, including 24 CFR Part 85.

A subset of firms selected for participation in Round I of planning were assigned work in Round II of the planning process. Firms were chosen for participation in Round II on the basis of their performance in Round I, their ability to work in the regional communities included in Round II, and their overall capacity to take on additional work.

2.4 Planning and Project Development

Working in consultation with State experts, Planning Committees determined the boundaries of their Planning Area, the area in which each NYRCR Committee focused its planning. These areas sometimes included a primary and secondary area or focus areas based on current recovery needs and future risk. Projects were developed through detailed analyses that examined assets as well as previous and potential future risks, in conjunction with the Planning Committee's vision statement, and community participation. The list of potential projects was narrowed through Planning Committee vote.

2.4.1 Asset Inventory

The asset inventory was a compilation of each Planning Area's social, economic, and natural resource assets that were, or could be, affected by climate change. These assets may or may not have been damaged in the storms. The asset inventory was based on all available maps and data, supplemented by input from the Planning Committee and the

general public. The inventory reflected the risk area¹ the asset is located in, and whether the asset is highly valuable to the community.

2.4.2 Vision Statement

A vision statement was created by each Planning Committee and presented to the public in a public engagement event. It was used to guide the work of the Planning Committee throughout the planning process.

2.4.3 Risk Assessment

The risk assessment evaluated the degree of risk from flooding faced by critical and significant assets in the planning area. The risk assessment was conducted using the risk assessment tool developed by the New York State Department of State (DOS). For each asset, the risk assessment tool considered degree of hazard, exposure, and vulnerability. The risk assessment tool was calibrated to assess risk from a 100-year flood, and incorporated consideration of the “risk area” in which each asset was located. Risk areas for coastal communities were mapped by the DOS for the NYRCR Program and incorporated a rigorous, science-based prediction of three feet of sea-level rise over 100 years. Risk areas for riverine communities were determined using FEMA’s Flood Insurance Rate Maps.

2.4.4 Needs and Opportunities Assessment

This assessment provided a close look at what the community needed to become more resilient and opportunities for the community to improve local economic growth and enhance its resilience to future storms. The assessment utilized first-hand experiences of residents and their community knowledge, as well as an in-depth analysis of existing conditions.

2.4.5 Strategies for Investment and Action

The Planning Committee developed strategies for their communities to recover from damages caused by Hurricane Irene, Tropical Storm Lee, and Superstorm Sandy, as well as strategies to make their communities more resilient to future storms. These strategies, such as ensuring the quality of life and safety of vulnerable populations, improving stormwater management and drainage systems, and providing coastal flood protection, formed the backbone of the projects developed by the Planning Committees. In the NYRCR Plans, the strategy or strategies underlying each project was highlighted in the project’s profile to demonstrate the connection(s) between strategies and projects.

2.4.6 Cost Benefit Analysis

Based on preliminary research and data provided by planning firms, Planning Committees determined which projects to advance for a cost benefit analysis (CBA). The CBA involved developing a cost estimate for the project while identifying the potential benefits and costs of the project. The CBA was mainly qualitative, but in instances that a benefit associated with a project was quantifiable, and the degree of the benefit could be determined with reasonable effort, the quantity of the benefit was included. The CBA

¹ Risk area is based on flood risk zones.
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included an examination of four benefit types– risk reduction, economic, environmental, and health and social– as well as a close look at the sustainability of benefits, the length of the useful life of the project, and any negative externalities or opportunity costs. In cases where the project was intended to reduce flooding, Planning Committees were encouraged to repeat the risk assessment process using an alternative scenario stipulating that the proposed project or action was actually implemented. This risk reduction analysis allowed the Planning Committee to consider the extent to which the proposed project or action would reduce risk to critical facilities or significant assets, and to consider this benefit alongside other benefits and costs.

2.4.7 Development and Consideration of Projects

After considering the information developed throughout the planning process, particularly the risk assessment and the CBA, Planning Committees voted on which projects to include in their NYRCR Plan and how to categorize these projects. Projects fell into one of three categories:

1. *Proposed Projects* are proposed for funding through an NYRCR Planning Area’s allotment of CDBG-DR funding. In most instances, Planning Committees elected to include Proposed Projects that, in their aggregate estimated cost, exceeded the Community’s approved allotment. This allowed for flexibility in the event some proposed projects were ineligible due to environmental review, CDBG-DR eligibility, technical feasibility, or other factors identified upon further project review.
2. *Featured Projects* are projects and actions that the Planning Committee identified as important resiliency recommendations and analyzed in-depth, but did not propose for funding through the NYRCR Program with CDBG-DR funding. Where possible, GOSR worked with communities to explore alternative funding sources or leveraging options for these projects. In select circumstances, such as if outside funding became available for a Featured Project or for the Planning Committee, or the scope of a Featured Project developed in such a way that it could be implemented using the Planning Committee’s allotment of CDBG-DR funding, a Featured Project may be implemented through the NYRCR Program.
3. *Additional Resiliency Recommendations* are other projects and actions that the Planning Committee wanted to highlight.

The Planning Committee worked with NYRCR Program staff and planning firms to produce project profiles for Proposed and Featured Projects selected for inclusion in the Community Reconstruction Plan. Project profiles included descriptive details and information on project location, resiliency strategies the project will promote, the project’s costs and benefits, as well as the project’s tie to the storm – how the project mitigates or addresses recovery or resiliency needs resulting from the covered disaster(s) (see [Section 3.2.2](#)).

2.5 NYRCR Plan

The culmination of the NYRCR planning process was the submission of a NYRCR Plan to GOSR. The NYRCR Plan represented the work of the Planning Committee and the broader community. Projects included and profiled in the NYRCR Plan were eligible to be considered for implementation in the implementation phase of the NYRCR Program. NYRCR Plans aid communities in recovering from a natural disaster, increase a community's resilience to extreme weather, improve the future of their economy, protect vulnerable populations, and contribute to regional efforts. Strategic, creative, and locally-appropriate projects were strongly encouraged. NYRCR Plans included the following elements:

- Community Overview;
- Assessment of Risks and Needs;
- Reconstruction and Resiliency Strategies;
- Proposed and Featured Project Profiles; and
- Additional Materials.

2.6 NY Rising to the Top

The NY Rising to the Top (NYRTTT) competition provided winning Planning Committees with additional funds for the implementation of projects in their NYRCR Plans. NYRTTT was available to Round I and Round II communities. Round I Planning Committees competed for \$24 million in awards across eight categories, with an award of \$3 million for project implementation in each category. Round II Planning Committees were eligible to compete for three awards, totaling \$3.5 million. The two Rounds' NYRTTT funds were commensurate given the ratio of award funds to Program allotments.

To be considered for a NYRTTT award, Planning Committees submitted an online application that described one or more project(s), plan(s), or action(s) which they believed met any of the award categories listed below. NYRCR Program staff reviewed and assessed all applications according to a rubric with a 3-point scale, and advanced all applications to the NYRCR Program Directors.

In the second round of review, Program Directors considered the ranking already done and evaluated the applications according to the following criteria:

- *Alignment with State and local priorities.* Applications were judged on whether supporting projects or actions addressed local needs and fell within HUD guidelines.
- *Equity of distribution of disaster funds.* Reviewers were permitted to consider whether a community had the opportunity for funding from other sources, and to ensure that funds were evenly distributed around the State.
- *Alignment with Federal guidelines and priorities.* Applications were evaluated on their compliance with guidelines and priorities put forth by HUD's CDBG-DR funding program. Consistency with NYRCR Plan and achievements during

planning process. Reviewers assessed the veracity of statements made by applicants.

Program Directors advanced those they believed should win the competition to GOSR's Executive Director, NYRCR Executive Director, and a DOS Deputy Secretary of State, who conducted their own assessment and forwarded the recommended award recipients to the Governor's Office for final approval.

Round I NYRTTT award categories were:

1. Best Regional Collaboration,
2. Best Use of Technology in the Planning Process,
3. Best Community Involvement in the Planning Process,
4. Best Inclusion of Vulnerable Populations,
5. Best Use of Green Infrastructure to Bolster Resilience,
6. Best Innovative and Cost-Effective Financing of Critical Projects,
7. Best Infrastructure Investments with Multiple Co-Benefits, and
8. Best Approach to Resilient Economic Growth.

Round II NYRTTT award categories were:

1. Best Regional Collaboration,
2. Best Inclusion of Vulnerable Populations, and
3. Best Use of Green Infrastructure to Bolster Resilience.

3.0 Implementation Policies

This section of the Policy Manual begins with a chronological overview of the NYRCR Program’s project implementation policies with a subsection focused on each phase of the implementation process. This is followed by a “Multi-Phase Requirements for Subrecipients” subsection, which discusses the many implementation policies that are relevant to more than one phase of the implementation process, and ends with discussions of switching subrecipients and subrecipient closeout.

3.1 Project Grant Manager Selection

The NYRCR Program retained a vendor to offer support throughout the NYRCR Program implementation process, acting as project Grant Managers and offering overall program development support. The Grant Managers and other consultant staff provide planning, advisory consulting, and project management support to both Program Staff and subrecipients.

The firm was chosen through a RFP. The RFP had the following criteria:

1. Experience and Capacity,
2. Technical Approach,
3. Proposal Rate Structure,
4. Information Technology, and
5. Knowledge of Sandy Recovery in New York.

3.2 Project Identification for Implementation

The NYRCR Program employs the following **NYRCR Project Identification Checklist** to identify projects for implementation. Projects to be implemented are expected to meet some of the criteria laid out below to the greatest extent possible. The following subsections go into additional detail on some of the criteria as well as considerations regarding project funds and program income.

- Included in the NYRCR Plan;
- Responsive to Risk/Needs Assessment;
- Conceptually CDBG-DR eligible;
- Benefits (or serves/assists) LMI households in planning area equally with, or greater than, other population groups;
- Meets specific NYRCR program goals/addresses priorities:
 - Ecosystem restoration
 - Regional collaboration
 - Alignment with other resiliency projects and State policy objectives
 - Innovative
 - Supports vulnerable populations
- Receives critical stakeholder support;
- Responds to condition caused by relevant storm event;
- Mitigates storm-induced condition;

- Incorporates resiliency into scope;
- Has reasonable implementation period;
- Has capable and willing subrecipient available to implement project;
- Aligns with or advances other resiliency projects and State policy objectives;
- Employs innovative technical or strategic solutions;
- Is feasible with regard to permitting requirements; and degree, cost, and time required for environmental analyses, other regulatory review, and pre-development work including design and engineering; and
- Reduces risk to populations and critical assets.

The NYRCR project identification checklist confirms project eligibility, feasibility, stakeholder support, and alignment with State principles in the technical opinion of NYRCR Program staff. This checklist is completed by Grant Managers and is reviewed by the NYRCR Project Delivery Director.²

3.2.1 Project Risk Assessment

Grant Managers undertake a **Risk Assessment** to determine a potential project's risk level. Factors considered in the risk assessment are:

- Sponsoring entity (the proposed subrecipient);
- Complexity of project;
- Entity's experience;
- Funding;
- Environmental factors;
- Land acquisition/relocation factors; and
- Involvement by additional entities.

The **Risk Assessment** provides a risk score, which is the estimate of the probability that a project will not succeed (i.e. not be completed in a CDBG-DR compliant and timely manner). To determine the risk score, each factor receives a low, moderate, or high rating, and each rating receives a specific weight. A risk score of 0 percent to 40 percent is considered a low risk; 41 percent to 70 percent moderate, and 71 percent to 100 percent high. The risk assessment, along with NYRCR Program staff experience in dealing with a subrecipient, is used to determine the level of TA to be provided to the subrecipient.

3.2.2 Tie to the Storm

All projects implemented must reasonably tie-back to the impact of Superstorm Sandy, Hurricane Irene and/or Tropical Storm Lee, whereby project activities respond to an unmet recovery need caused directly or indirectly by one or more of the above qualified disasters

Throughout the Planning and Implementation Phases, a project's tie to the storm is demonstrated in multiple ways. For example, in the Planning Phase, the project profiles

² Prior to February 2017, the NYRCR Program Managing Director reviewed this checklist.
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of each Committee's Final Plan make clear the project's connection to the storm (see [Section 2.6](#)). In the Implementation Phase, a project's connection to the storm is demonstrated in the project's pre-application, application, and project-specific **Tie-back to the Storm Memo**.

A project may be tied to the storm in multiple ways, including:

- The storm may have caused the facility to fail to function.
- The storm may have caused damage to the facility.
- The facility or activity may be needed for the community's successful long-term recovery from the storm and for protection from similar events.

3.2.3 Eligible Activities

All projects implemented must be an eligible activity. Eligible activities for the use of CDBG-DR funds in the NYRCR Program are described in Section 105 of the HCDA. These activities include, but are not limited to:

- Acquisition of real property, public facilities and improvements, clearance, rehabilitation, reconstruction, and construction of buildings;
- Removal of architectural barriers for access by the elderly and handicapped;
- Disposition of real property, including costs associated with maintenance and transfer of acquired properties;
- Provision of public services, such as job training;
- Infrastructure projects including but not limited to payment of the non-Federal share of other Federal matching grant programs;
- Relocation associated with projects that utilize one or more of the other eligible activities listed here;
- Activities carried out through non-profits;
- Assistance to neighborhood-based organizations, local development corporations, and non-profits serving the development needs of communities;
- Energy efficiency/conservation programs; and
- Economic Revitalization activities.

The following activities are ineligible for the use of CDBG-DR funds in the NYRCR Program:

- Activities that do not address an identified disaster related impact;
- Activities that address preparedness measures that are not part of a recovery/rebuilding activity;
- Activities that are ineligible per 24 CFR 570.207 or the CDBG-DR regulations and a waiver has not been granted; and
- Activities that fail to meet a National Objective.

3.3 Subrecipient Selection and Capacity

GOSR selects a suitable subrecipient for each project by either direct, discretionary selection or through a method of competitive selection. GOSR undertakes a rigorous analysis of potential subrecipients to examine their capacity for project implementation.

Project Managers review subrecipients' Single Audits (i.e. A-133 Audit Report³) if required, or A-133 Compliance Certification Form and other audits (e.g. audits from the State Comptroller's Office) if a Single Audit is not required, as well as complete a risk assessment, initial assessment report and subrecipient capacity analysis. These analyses not only aid GOSR in determining if a subrecipient is a good fit for a project, but also help GOSR determine the level and kind of TA GOSR will provide for the subrecipient. GOSR's TA is intended to build a subrecipient's capacity, transfer knowledge, and ensure compliance with CDBG-DR requirements. Community allotments are tied to a particular community, not tied to a subrecipient. However, a subrecipient may be considered to implement more than one project with a community.

If GOSR determines that a potential subrecipient does not have the capacity to directly carry out a CDBG-DR project, GOSR works to identify another entity to act as the subrecipient for the project. After identifying a subrecipient, GOSR will assign a Project Manager who is responsible for day-to-day administrative tasks, oversight and other project delivery responsibilities. A number of NYRCR projects are being undertaken by the Dormitory Authority of the State of New York (DASNY).

Sub-subrecipients may be used by subrecipients at GOSR's discretion, after GOSR's assessment and approval. A sub-subrecipient is an indirect subrecipient of the Program, a lower tier to a subrecipient that is party to a SRA directly with the grantee (GOSR). The contractual relationship between subrecipient and sub-subrecipient is analogous to the contractual relationship between the Grantee (GOSR) and subrecipient. The sub-subrecipient agreement is, most notably, for the performance of a substantive portion of the project funded under the SRA with the grantee. All provisions in a SRA to which a subrecipient is subject are passed down to a sub-subrecipient through a sub-subrecipient agreement.

Subrecipients may propose sub-subrecipients (for example, a non-profit subrecipient may suggest an additional non-profit partner to help the non-profit subrecipient implement the activity) at any point in implementation. GOSR assesses sub-subrecipients through an initial assessment meeting, completion of a Subrecipient Capacity Checklist and financial management questionnaire. The subrecipient must enter into a SRA with its sub-subrecipient (Sub-Subrecipient Agreement), which must incorporate GOSR's Supplementary Conditions for Contracts and must also comply with all legal and regulatory requirements. A sub-subrecipient agreement is not an agreement between two or more GOSR subrecipients.

3.3.1 Selection Criteria

Potential subrecipients are examined on the following considerations:

- Prior experience with executing CDBG or other federal funded projects including but not limited to knowledge and prior experience with the following:

³ As of December 26, 2014, GOSR applies the provisions of 2 CFR 200 Subpart F to subrecipient audits. However, naming conventions for audit-related documents may also refer to OMB Circular A-133.

- 24 CFR Part 84 and 85 requirements (each as amended by 2 CFR 200)
 - Documentation that the project meets a CDBG National Objective; and
 - Documentation that the project's expenditures are for CDBG Eligible Activities.
- Staff capacity to effectively manage CDBG-DR grants, including but not limited to:
 - Capacity to perform financial monitoring and oversight;
 - Capacity to perform grants management functions as demonstrated through prior experience with managing grants with in-house staff or with a grants management consultant;
 - Internal auditing capability;
 - Administrative staffing; and
 - Knowledge of both federal and State procurement and contracting requirements.
 - Knowledge and experience in financial management of federal grant funds, specifically of CDBG funds; and the ability of financial systems to meet all State and federal requirements including but not limited to:
 - Accounting methods, and budget controls;
 - Proof that expenditures are necessary, reasonable and directly related to the grant;
 - Monitoring and controls of timely expenditure of federal funds;
 - Compliance with 2 CFR 200 (effective for awards made after December 26, 2014), A-121 (for higher learning institutions);
 - Completion and results of prior Single Audits (i.e. A-133 Audit Report) , if applicable; and
 - Completion and results of any other audits as it relates to financial capacity.
 - In good standing with the State of New York (for entities other than public entities).
 - Experience, knowledge, and compliance with all Federal regulations outside of direct CDBG requirements, as it applies to the grant including, but not limited to, the following requirements:
 - Davis Bacon and all labor standards, Section 3, Minority/Women-Owned Business Enterprise (M/WBE), environmental, lead based paint, Civil Rights, Section 504, Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act) (URA), Fair Housing Act (FHA), Americans with Disabilities Act of 1990 (ADA), Age Discrimination Act, and records management.
 - Other factors including relationship to the community, relationship to other government entities, and specialized skills, knowledge, or capacity that would make an entity suitable as a subrecipient.

3.3.2 Initial Assessment

The initial assessment report aids GOSR in determining if the subrecipient is a good fit for a project, and helps to determine the level and kind of TA GOSR will prepare for the subrecipient. The initial assessment is done once for each subrecipient. After an initial assessment is complete and a subrecipient is determined to have sufficient capacity to participate in the program, the subrecipient may be selected as a subrecipient for additional projects in the future which were not identified during the initial assessment. The initial assessment:

- Documents the initial and any follow-up meetings Grant Managers and Project Managers have with the subrecipient;
- Documents the subrecipient's prior CDBG experience (if any);
- Documents potential number of projects subrecipient will undertake and any action items; and

The **Initial Assessment Report** includes a **Subrecipient Capacity Checklist** which covers subrecipient staff and experience with managing CDBG activities or similar grant programs, subrecipient's organization capacity, subrecipient's financial management capacity and other factors such as subrecipient's community relations, government relations and project-specific specialized skills, knowledge or capacity.

3.3.3 Direct Selection

Under the direct selection method, NYRCR Program staff identify an appropriate subrecipient by considering: (1) opportunities to build capacity at the most local levels of government, (2) jurisdiction over any assets that are essential to the project, (3) existing project, (4) financial management capacity, and (5) any other considerations specific to the project being implemented. GOSR directly selects subrecipients under the following scenarios:

- When an entity is uniquely qualified to implement a NYRCR project because the entity has sole jurisdiction over the project or complete control/ownership over a project site;
- When it is likely that an award to any other source would burden the entity with full site control or jurisdiction of the NYRCR Program project area;
- Where a competitive bidding process would cause unacceptable delays in fulfilling NYRCR Program project requirements;
- When there is a reasonable basis to conclude that the minimum needs of the NYRCR Program project can only be satisfied by the selected subrecipient; and
- When an entity is uniquely qualified to implement a NYRCR project due to that entity's execution of a program which meets the same vision and goals as required by the NYRCR project.

The direct selection process is documented for each subrecipient via the **Subrecipient Selection Memo**.

3.3.4 Competitive Selection

For certain public service activities, such as workforce development or social resilience services, GOSR may issue a Notice of Funding Availability (NOFA) or request for qualifications (RFQ) or request for proposals (RFP) to solicit proposals from eligible non-profit or public organizations to implement the projects or programs in certain communities. The NOFA/RFQ/P includes the scoring criteria and the selection methodology used to select eligible subrecipients. Pursuant to HUD's guidance, "Distinctions between Subrecipient and Contractor," (August 13, 1993), if a NOFA/RFQ/P is in compliance with the requirements contained in 24 CFR 85.36 (as amended by 2 CFR 200), the selected bidder will be treated as a contractor. If the NOFA/RFP/Q is not in full compliance, the selected bidder will be treated as a subrecipient.

The final projects selected for implementation may be amended based on the results of the NOFA/RFQ/P.

3.4 Subrecipient Agreement

Once GOSR has selected a subrecipient for participation in the NYRCR Program, GOSR works with the subrecipient to execute an **SRA**. The **SRA** serves as the mechanism for transfer of funds to the subrecipient, and requires compliance with all federal, State, and local laws, as applicable. In many cases, the agreement has no funding attached to it at the time of initial execution; it functions as a memorandum of understanding (MOU) between GOSR and the subrecipient. These \$0 agreements will be amended to incorporate the scope and budget of specific projects as subrecipients submit applications and they are accepted by GOSR. For some projects where the subrecipient is another state agency, a **MOU**, rather than an **SRA**, is executed. For projects where DASNY is the subrecipient, projects are initiated through a **Work Order (WO)**, rather than an amendment to the **SRA** or **MOU**.

Under earlier policies, capital projects required multiple amendments to a **SRA**. The first amendment would provide the funding necessary to support planning and design activities. The second (or subsequent) amendment would provide the funding necessary to support construction activities following the completion of project design and full environmental clearance. Planning or public service activities typically required a single amendment following the approval of the project. In these instances, GOSR certified that any planning or design activities were exempt from environmental review requirements before funding those activities through a **SRA** amendment.

However, in December 2015, the NYRCR Program's policy changed to allow a single amendment to a **SRA** to provide all the funding necessary to implement a project upon the acceptance of a project application, regardless of whether the project is a capital or non-capital project. Nonetheless, a subrecipient may not expend funds for construction until the project is approved by the NYRCR Program (see [Section 3.6.3](#)). **SRAs** may be

amended additionally at any point during implementation, as required by specific circumstances.

SRAs may be amended throughout a project's lifecycle.

3.5 Pre-Application

Project **Pre-application Reports** are drafted by NYRCR Program staff. The purpose of the pre-application process is to document:

- How the project meets one of HUD's three National Objectives;
- How the project is an eligible activity; and
- How the project is tied to one of the three disasters.

The **Pre-Application Report** consists of:

- A project description;
- Tie to the disaster;
- Assigned National Objective;
- Project eligibility review under 24 CFR 570.482 and HUD FRNs;
- Statement of justification and recommendation; and
- Other relevant information.

The project description contains a level of detail sufficient for assessing the appropriate level and scope of any environmental review requirements.

If, after it is approved by the pre-application panel, through project development, a project changes to address a different national objective than what was approved by the pre-application panel, the project's **Application for Funding** should clearly state that the national objective has changed since the pre-application and explain why the change has occurred. An amended pre-application is not needed.

Any planning activity with an approved pre-application that gains non-planning scope in the application phase or beyond does not need an amended pre-application report as long as the additional scope is a logical outgrowth of the planning activity.

For example, if a drainage study to investigate the sources of flooding in a neighborhood finds an under-sized culvert is the cause of the flooding, an amended pre-application report does not have to be created to address culvert repair as the repair is a logical outgrowth of the study. Although such a pre-application report does not have to be amended, an application for the project to be funded must be submitted for review by GOSR. The application must include a clear description and justification for any changes to the project scope and budget from the approved pre-application report.

3.5.1 Pre-Application Review Panel

Each project's **Pre-application Report** is reviewed by a GOSR pre-application review panel, composed of three rotating members from GOSR's Compliance, Legal, Policy, Finance, and Environmental departments. The panel votes whether the project meets the National Objective, is an eligible activity, and has a tie to the storm. Pre-application reports that receive majority (two of the three panelists') votes will advance to the full project application phase. **Pre-application reports** that do not receive a majority of the votes are not advanced. **Pre-application reports** may be advanced with conditions, which are noted on the voting sheets. Subrecipients will be notified of the pre-application review panel's decision.

3.6 Application

Once a project's **Pre-Application Report** is approved, the subrecipient completes and submits to GOSR the **Application for Funding**. GOSR staff and Grant Managers provide the subrecipient with support in completing the application. The application includes:

- A detailed description of the project;
- Tie to the disaster;
- Information pertaining to CDBG-DR eligibility;
- Project maps;
- Project time schedule;
- Activity beneficiary form;
- A project cost estimate; and
- Duplication of benefits certification.

If the activity is the provision of a public service, program occupancy and maintenance expenses associated with the provision of this service may be considered direct costs of the project. The public service provider and the NYRCR Program must develop a methodology for calculating these direct costs to be reimbursed. If the public service provider has a federally negotiated cost rate agreement, these costs may be considered indirect costs and be reimbursed by GOSR as such if permitted under the relevant SRA.

The **Application for Funding** includes the **Applicant/Recipient Disclosure/Update Report (HUD-2880)**. This form must be filled out and signed by the subrecipient. Any contractors with executed contracts must be listed on the form. This form is also filled out at the time of project approval and project closeout.

In some cases, there will be two subrecipients for one project. Many of these projects will include one subrecipient undertaking land acquisition and the other carrying out the non-acquisition portion of the project. The subrecipient that owns (or will own) the site and be responsible for operation and maintenance of what is constructed should be the subrecipient on the acquisition portion of the project. The subrecipient that is best situated to carry out the construction should be selected as the subrecipient on the construction portion of the project.

3.6.1 Project Management Agreements (PMAs) and Program Participants

A program participant is an eligible jurisdiction or entity that will ultimately own and maintain the NYRCR project. All program participants must sign a Project Management Agreement (PMA). A subrecipient may be a program participant but in some cases, is not.⁴

DASNY PMA

Program participants for DASNY projects must sign a PMA. The PMA (also known as the three/third party agreement) is a contract executed with DASNY (the subrecipient), the applicant (the program participant), and GOSR. The purpose of the DASNY PMA is to set forth the responsibilities of each party, allocate liability, and govern all activities undertaken by DASNY, GOSR, and the program participant for the project. If there are multiple program participants on a project, there will be multiple PMAs for the project. The PMA needs to be executed before construction, however DASNY should have Right of Entry (ROE) permission from participants before allowing consultants to conduct any field work.

Non-DASNY PMA

Non-DASNY PMAs are an agreement between a subrecipient (other than DASNY) and a program participant. The non-DASNY PMA grants the subrecipient ROE to implement the proposed project and obligates the program participant to follow applicable state and federal rules and regulations, and GOSR program requirements. This is a flow-down agreement that transfers applicable SRA requirements from the subrecipient to the program participant. This agreement is specific to each project and is always between the subrecipient and the program participant.

3.6.2 Application Acceptance

Before an **Application for Funding** can be either accepted or rejected finished applications are reviewed by NYRCR Program Policy staff using the **Guide for Review of NY Rising Community Reconstruction Program Project Application**. NYRCR Program Policy staff submit the application review guide to the Policy Director, who reviews and accepts.⁵ Then the Project Delivery Director reviews the application review guide and submit the application and completed review guide to the NYRCR Executive Director, indicating whether they accept or reject the application. The NYRCR Executive Director reviews the application and review guide, verifying consistency with GOSR policies and procedures and indicates a final acceptance or rejection. Subrecipients are notified of the application's acceptance via email.

⁴ In certain NYRCR Program documents, program participants were called project beneficiaries. Because "project beneficiaries" is a term used by HUD to convey a different meaning, GOSR's Legal Department changed the reference to project beneficiary to program participant in the Project Management Agreement and the NYRCR Program adopted this terminology.

⁵ The Policy Director was added as the second reviewer in Nov 2018.

3.6.3 Application Approval

In the case of non-capital projects (such as planning studies and public service activities), The NYRCR Executive Director may approve an application upon application acceptance.

In the case of a capital project, following environmental review (discussed in [Section 3.8](#)) and project design, the NYRCR Executive Director approves subrecipients to move forward with project construction. The application approval process begins at 90% design and includes review of project design to confirm conformance with the spirit of the NYRCR Planning Committee's proposal, confirmation of environmental clearance, Duplication of Benefits (DOB) and Order of Assistance (OOA) check, and confirmation of compliant status by the Monitoring and Compliance Department (MCD). As of April 2020, identification of resilience performance standards is also documented at project approval. Subrecipients will be notified of the application's approval.

3.6.4 Documenting Project Changes

Changes to projects are documented through **SRA Amendments** and other methods as needed (if the application has been accepted or approved), and changes to contracts are documented through the Contract Amendment and Change Order form. Contract amendments are for non-construction contracts and construction change orders are for construction-related contracts. In some cases, an SRA may need to be amended *and* a contract amendment or change order may be needed; in other cases, only an SRA amendment *or* contract amendment or change order may be necessary.

Application Amendments

From May 2017 to November 2019, capital⁶ and non-capital project applications were amended after they were accepted or approved at any point until project closeout. The cutoff for submitting application amendments was in November 2019. From November 2019 onwards, documenting project changes, that would have previously required an application amendment, is performed via SRA amendment or other method as described below.

SRA Amendments

As of November 2019, changes to accepted project applications are documented using the **SRA Amendment**. Changes to the application that are captured in the SRA Amendment include project budget, whereby project budget is increased above the SRA total budget; project scope; project schedule, whereby project completion will extend beyond the expenditure deadline (using non-PL 113-2 CDBG-DR funds); and subrecipient add/switch.

Other Methods

As of November 2019, changes to project budgets whereby the budget is decreased or increased, but the total amount in the SRA remains the same, are documented and approved in the **Project Budget Adjustment Approval Memo**. When funds are

⁶Prior to May 2017, capital project applications were not amended after they were approved.
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removed from an SRA, this change is documented and approved in the **SRA Budget Adjustment Approval Memo**. Changes to a project's National Objective are documented by changing the project's Disaster Recovery Grant Reporting (DRGR) code at the time of the change. Additionally, for LMI projects, the national objective is documented in the **LMI Memo** at the time of project closeout. Changes to project information, including beneficiary, elected official, and schedule change that does not go beyond the expenditure deadline are documented in the **Program Dashboard**. All of the above changes are also documented in the **Project Closeout/Project Cancellation/Subrecipient Switch Review Checklist** during the project closeout phase.

Non-Construction Contract Changes

Non-construction contract changes are documented and approved using the **Contract Amendment and Change Order Form**. A cost reasonableness review (CRR) (if removing or adding scope) should be completed and reviewed to document any project changes; for contracts over \$15,000, an independent cost estimate (ICE) and cost reasonableness review are needed.

Construction Change Orders

Changes to construction contracts are documented and approved in the **Contract Amendment and Change Order Form**. In general, the Program will only approve non-discretionary⁷ change orders which impact performance, safety, health, or the regulatory requirements of the project.

There are three tiers of change order review and approval, depending on whether the change order is urgent (needs to be approved immediately to address a health or safety emergency), time sensitive (needs to be approved within three business days in order to prevent work stoppage), or not time sensitive (approval granted in over three business days). The subrecipient's Construction Project Manager must review the situation and determine the urgency level.

Urgent change orders do not need GOSR approval prior to the subrecipient issuing notice to proceed (NTP), as allowed under 2 CFR 200.320 (f)(2), but must be documented by submitting the **Contract Amendment and Change Order Form** within three weeks of NTP. Time sensitive change orders need pre-approval by phone or email with GOSR Program staff before subrecipient can issue NTP. The **Contract Amendment and Change Order Form** must be submitted within three weeks after the NTP. Non-time sensitive change orders are approved through the execution of the **Contract Amendment and Change Order Form**.

Should scope and budget change so significantly during construction that a new construction procurement (typically a sealed bid) is required, an SRA amendment may be required to be submitted by the subrecipient.

⁷ A discretionary change order is a change order that does not impact performance, safety, health or regulatory requirements. A non-discretionary change order is a change order that does impact performance, safety, health or regulatory requirements.

3.7 Public Engagement in Implementation

Public engagement was central to the NYRCR Program during the Planning Phase and it is similarly important during the Implementation Phase. During implementation, direct engagement is undertaken with stakeholders, public officials, and the broader public to ensure comprehensive outreach to all populations. In general, for projects with construction, two public engagement events may be undertaken – one during A/E and one during or after construction. Public engagement includes, but is not limited to, informational public meetings, focus groups, and steering committees. NYRCR Program staff will also use online platforms to provide project updates to the public.

3.8 Environmental Requirements

CDBG-DR funding is contingent upon compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation legislation and Executive orders. In addition, HTFC, as well as agencies and units of general local government (UGLGs) in New York State must comply with the State Environmental Quality Review Act (SEQRA). New York City agencies must also comply with the City Environmental Quality Review (CEQR). In general, GOSR's BERA serves as the lead agency for purposes of NEPA, SEQRA and CEQR. In certain circumstances, GOSR may decide to cooperate in a joint environmental review with another federal or state agency or a UGLG. GOSR may also choose to delegate its NEPA or SEQRA responsibilities if, in the discretion of a GOSR Certifying Officer, such delegation is warranted and supported by law.

HUD's Environmental Review Procedures allow grantees, such as New York State through GOSR, to assume environmental review responsibilities under NEPA. In accordance with 24 CFR Part 58 and pursuant to the State's Grant Agreement with HUD, GOSR serves as "Responsible Entity" responsible for undertaking compliance efforts for the Program. Within GOSR, the Bureau of Environmental Review and Assessment (BERA) will be responsible for performing environmental reviews and compiling the **Environmental Review Records** (ERRs). BERA conducts environmental reviews either directly or through the use of qualified environmental service contractors. The GOSR Certifying Officers are ultimately responsible for certifying that GOSR's environmental reviews are in compliance with NEPA and HUD environmental regulations.

In accordance with Public Law 113-2, when GOSR uses CDBG-DR funds to supplement federal assistance provided under Section 402, 403, 404, 406, 407, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), GOSR may adopt an environmental review, approval, or permit performed by a Federal agency by conducting GOSR's own review, publishing notice and submitting a Request for Release of Funds (RROF) as needed. Such adoption shall satisfy the responsibilities of GOSR with respect to environmental review.

3.9 Subrecipient Payment

Subrecipient payments are typically expended on a reimbursement-based payment process. “Reimbursement-based” means reimbursing subrecipients for work that has been completed, reviewed, and approved. Project costs must be incurred by subrecipient and documented as required by the terms of the SRA for payment of invoices as per the payment terms in the SRA. The subrecipient submits a request for reimbursement as with the **Request for Payment package**. GOSR reviews and approves the request. However, while the program is generally a reimbursement-based one after the work has been completed, reviewed, and approved, GOSR may provide advance payment to subrecipients before the work is completed per 2 CFR 200.305. Prior to receiving payment, all required reporting must be completed.

3.10 Project Closeout

The project closeout is the process by which GOSR determines all requirements of the SRA between GOSR and the subrecipient for a specific project have been completed in accordance with the terms and conditions of the SRA. Project closeout is requested by the subrecipient when:

- All project expenses (including non-CDBG-DR funds) to be paid have been completed and payment requested;
- Approved work has been finished;
- Any other responsibilities detailed in the SRA have been fulfilled;
- All required documentation has been collected and uploaded to the GOSR Subrecipient Portal (GSP); and
- All monitoring or audit findings have been cleared.

Project closeout consists of:

- A **Request for Project Closeout** form, with applicable project documents attached, submitted to GOSR by the subrecipient;
- A **Project Closeout/Project Cancellation/Subrecipient Switch Review Checklist** completed and approved by the Program and other departments within GOSR; and
- A project closeout letter sent to the subrecipient.

In addition, the project’s status must be updated in HUD’s DRGR system, and a final HUD quarterly narrative report must be submitted to reflect the project’s status. For projects comprised of GOSR’s CDBG-DR funds as well as other funds, project closeout occurs when all funds are spent.

It is at GOSR’s discretion to reprogram any leftover funds allocated to closed out projects.

3.11 Programmatic Compliance Checks

The NYRCR Program undertakes periodic review of its program files to ensure compliance with HUD regulations. The Program also collects quarterly progress reports (QPRs) from subrecipients.

3.12 Monitoring and Compliance Department (MCD)

GOSR's MCD is comprised of two parts: the Monitoring Department and the Compliance Department.

3.12.1 Monitoring Department

GOSR has established a monitoring plan administered by the Monitoring Department. This monitoring plan is typically implemented in six month periods and generally includes two types of monitoring: programmatic monitoring and external monitoring.

- Programmatic monitoring includes assessments of key internal controls and compliance with program policies and procedures, contractual requirements, applicable State and Federal regulations, and GOSR's Action Plans and Amendments.
- External monitoring is performed for GOSR subrecipients, developers, and other parties to GOSR agreements, and consists of monitoring compliance with contractual requirements, applicable State and Federal regulations, and program requirements.

3.12.1.1 Programmatic Monitoring

The NYRCR Program is included in the MCD's programmatic monitoring plan. This monitoring focuses on functions being performed by GOSR programs. It is intended to provide reasonable assurance that GOSR programs have efficient and effective internal controls, including controls to ensure that:

- Programs achieve their intended results;
- Resources are used in a manner consistent with the agency's mission;
- Programs and resources are protected from waste, fraud, abuse, and mismanagement;
- Laws, regulations, and applicable policies and procedures are followed; and
- Reliable and timely information is obtained, maintained, reported, and used for decision-making.

3.12.1.2 External Monitoring

Subrecipients involved in the implementation of the NYRCR Program are included in the MCD's risk-based external monitoring plan. Through external monitoring, MCD identifies risks and deficiencies and provides recommendations for corrective actions or TA to address risks.

3.12.2 Compliance Department

As of February 2020, the MCD has absorbed the portfolio and functions of the Office of Diversity and Civil Rights (DCR). Accordingly, the Compliance Department works closely with subrecipients and contractors to advance GOSR's mission, while increasing access to its workforce and contracting opportunities. This is achieved through advocacy, outreach, technical assistance and training, regulatory review, and program implementation. Further, the Compliance team performs regular reviews of required diversity reporting, as well as review of utilization plans, achieved utilization, and documentation of efforts to meet the established diversity goals. The Compliance team facilitates GOSR's compliance with several federal and State diversity and inclusion regulations including: the Minority and Women-Owned Business Enterprises (M/WBE), Fair Housing & Equal Opportunity (FHEO), and HUD's Section 3 Program. The Compliance team also oversees important accessibility issue areas, including: Limited English Proficiency (LEP), Americans with Disabilities (ADA), and Section 504 of the Rehabilitation Act.

The Compliance team serves as an internal resource for GOSR, providing support to Programs, subrecipients, and vendors, in achieving compliance with statutory requirements and diversity objectives. The Compliance Department's programmatic support services include:

- Working with NYRCR projects to ensure they are aligned with GOSR's diversity and civil rights requirements;
- Reviewing and providing guidance on Section 3 and M/WBE documents submitted by vendors as needed, such as utilization plans and efforts;
- Conducting technical assistance and trainings with internal Program staff, subrecipients and contractors;
- Planning and executing networking events which bring together GOSR subrecipients and contractors with M/WBE and Section 3 businesses looking for contracting opportunities;
- Participating in pre-bid, pre-construction, and project meetings to consistently be a resource and provide strategic advice where required;
- Providing policy and regulatory guidance pertaining to applicable diversity regulations, particularly M/WBE and Section 3 requirements;
- Strategically identifying M/WBE and Section 3 firms in order to facilitate the dual goals of providing greater opportunities to M/WBE and Section 3 firms, while also assisting Program in meeting their goals and requirements;
- Working with subrecipients and vendors to utilize the New York State Storm Recovery Opportunities Portal (NYSSROP) in order to post procurement and job opportunities in order to recruit and source M/WBE and Section 3 businesses and Section 3 residents;
- Working with subrecipients, contractors, and Program staff to ensure that all required diversity reporting is properly submitted;
- Analyzing subrecipient and contractor compliance with reporting requirements and utilization goals; and

- Providing hands-on technical assistance to subrecipients and contractors where there is a gap between their project's required goals and current utilization.

For more information about the NYRCR Program's M/WBE and Section 3 policies, see Exhibit 1-Program Administrative Requirements and Cross-Cutting Federal Regulations.

3.12.3 Technical Assistance to Subrecipients

To assist subrecipients in complying with all CDBG-DR regulations and any GOSR policies, as well as to build the subrecipient's capacity, GOSR staff and Grant Managers provide subrecipients with necessary TA.

GOSR's TA is comprised of formal trainings (prepared materials, in-person presentations and webinars) and informal trainings (verbal or written advice, provided as needed, through in-person meetings, emails, or telephone calls). TA occurs at every step of the implementation process, from the initial assessment period through project closeout. TA is also provided to assist subrecipients in preparing for GOSR's monitoring. The nature and rigor of TA is continuously tailored to meet the subrecipient's unique needs.

3.12.4 Audit Requirements

In accordance with 2 CFR 200 Subpart F (replacing the OMB A-133 Circular), all non-federal entities expending \$750,000 or more in Federal funds during their fiscal year must have an annual audit conducted, as detailed in 2 CFR 200. Subrecipients that fall within this category must submit a copy of their single or program-specific audit report to GOSR. Upon receipt of the single audit, program staff will alert the MCD. The MCD will review the audit report and determine whether any aspects of the audit impact GOSR funding (e.g., a finding related to GOSR funding or failure to properly identify GOSR funding), necessitating a management decision from GOSR. Any deficiencies noted in the management decision must be fully cleared by the subrecipient within 30 days after subrecipient receives the management decision. Any deficiencies noted in the management decision must be fully cleared by the subrecipient within 30 days after subrecipient receives the management decision.

Subrecipients that expend less than \$750,000 in Federal funds must complete a Single Audit certification (i.e., A-133 Compliance Certification Form) for the most recently concluded fiscal year. Subrecipients may also submit a financial report; types of financial reports include an Independent Auditor's Report, New York State Comptroller Annual Financial Report (AUD), New York State Charity Bureau Annual Filing Report, or internally-generated balance sheet and income statement related to the expenditure of CDBG-DR funds.

For a sub-subrecipient, the subrecipient determines if Single Audits from the sub-subrecipient must be submitted, and the subrecipient collects and reviews the Single Audits as needed.

3.13 Multi-Phase Requirements for Subrecipients

Multi-phase requirements refer to policies that occur in more than one phase of the project implementation process. Subrecipients must comply with all administrative and financial requirements in the CFR Title 24 and all applicable OMB's Circulars. As noted in this section, GOSR will provide TA to subrecipients to assist in maintaining compliance. The NYRCR Program Procedure Manual provides in-depth information on implementing the procedures associated with the policies outlined in this Manual. GOSR staff and consultants utilize the Policy and Procedure Manuals to provide TA to subrecipients to comply with financial management, procurement, Equal Opportunity, Section 3, environmental review, insurance and property management, construction requirements, record keeping and reporting, single audit, reimbursements, SRA modifications, and monitoring requirements.

3.13.1 Timely Expenditure of Funds

As per the Appropriations Act (P.L. 113-2), CDBG-DR funds must be obligated no later than September 30, 2017, and expended within two years of the date funds are obligated, unless a waiver is granted by HUD. GOSR obligated all of its P.L. 113-2 funds from HUD in January 2017. As of February 2019, GOSR has received an expenditure extension for its obligated funds to September 30, 2022. P.L. 112-55 funds are not subject to the same deadlines.

3.13.2 Order of Assistance

Following the hierarchy of funding enumerated in the Stafford Act, CDBG-DR funds will never displace other available funds (see Duplication of Benefits, [Section 3.13.3](#)). FEMA regulations at 44 CFR 206.191 make clear the order of funding assistance, and, as noted in the November 16, 2011 FRN (76 FR 71060), "Since CDBG disaster recovery provides long-term recovery assistance via supplemental congressional appropriations, and falls lower in the hierarchy of delivery than FEMA or SBA assistance, it is intended to supplement rather than supplant these sources of assistance."⁸

Starting in October 2018, the NYRCR Program checks infrastructure projects prior to project approval and project closeout for compliance with OOA requirements.⁹ The FEMA Emergency Management Mission Integrated Environment (EMMIE) and MB3 databases are reviewed to identify whether a project with the same or overlapping scope with a NYRCR project received FEMA Public Assistance (PA) or Hazard Mitigation Grant Program (HMGP) funding and requested that FEMA deobligate the funding so that CDBG-DR funding could be used. Additionally, as new EMMIE data is released, Program staff review the entire database for projects that FEMA deobligated funds, to

⁸ *Federal Register Notice Vol. 76, No. 221* (November 16, 2011), <<http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-29634.pdf>>.

⁹ NYRCR infrastructure projects which have been approved prior to October 2018 will only be checked for OOA compliance once, prior to Project Closeout. NYRCR infrastructure projects which were closed out prior to October 2018 did not have an OOA compliance check conducted, however, if through the Program's regular monitoring of the entire EMMIE database a OOA compliance issue were identified for a closed out project, GOSR would work with the subrecipient to resolve prior to subrecipient closeout.

ensure none of these projects are the same or have overlapping scope with a NYRCR project.

Program Staff also ensure that NYRCR projects could not have been funded by U.S. Army Corps of Engineers (USACE) funds or other applicable funding. Starting in October 2018, Program staff review the USACE database to confirm there is no OOA issue with that funding source and engage in ongoing oversight of subrecipients for OOA compliance.

3.13.3 Duplication of Benefits

Disaster recovery activities may be funded from a variety of both public and private sources. The Stafford Act's prohibition on DOB in section 312 (42 U.S.C. 5155) is applicable to all CDBG-DR grants. DOB occurs when financial assistance received from one source is provided for the same purpose as CDBG-DR funds provided, in accordance with HUD DOB guidance, found in the November 16, 2011 FRN Notice (76 FR 71060).

Prior to March 2017, only subrecipients or applicants for DASNY projects submitted self-certification DOB questionnaires and were checked for DOB by the Program. Starting in March 2017, all program participants that are implementing a capital project, as well as all entities that could receive duplicative assistance for the same purpose from another source must complete a self-certification DOB questionnaire at three points over a project's lifecycle:

1. Upon submission of a project application,
2. After the engineering/design phase of the project is complete but before the project is fully approved, and
3. In conjunction with the request for project closeout.

In the case of non-capital projects where there is no engineering/design phase, these self-certification questionnaires will be submitted twice over a projects lifecycle: upon submission of the application and at closeout.

Program staff will review DOB self-certification questionnaires, and for capital projects, will also access the FEMA EMMIE and MB3 databases to confirm that there is no DOB resulting from FEMA-PA or HMGP funding. Starting in October 2018, Program staff will also review the USACE database to confirm there is no DOB with that funding source.

Per the subrogation clause in the SRA (see [Section 3.4](#)), subrecipients must return to New York State any funds found to be a DOB, ineligible, unallowable, unreasonable, or non-compensable, no matter the cause. Under this clause, should a subrecipient receive CDBG-DR funding to support an activity and subsequently receive outside funding that would render the CDBG-DR funds a DOB, the duplicative CDBG-DR funds must be returned to GOSR.

In addition to the NYRCR Program's DOB questionnaire, GOSR's MCD will check for DOB in their monitoring of subrecipients.

For projects, capital and non-capital, where individuals, including homeowners or small businesses, are receiving a measurable benefit through a NYRCR project, all intake documents must include a DOB self-certification filled out by the applicant who would receive the measurable benefit if they participate in the program. This DOB self-certification should determine an applicant's eligibility to participate in the project or program. The subrecipient certifies to GOSR that it has reviewed these DOB self-certifications and has found no DOB.

If an SRA is amended to include a new subrecipient or to switch a project to a new subrecipient, a DOB questionnaire is required and DOB will be checked by GOSR.

Prior to November 2019, a subrecipient switch requirement an application amendment, where a DOB questionnaire was required and DOB was checked by GOSR.

3.13.4 National Objective

As previously mentioned, each project implemented with CDBG-DR funds must meet one of three national objectives:

- Benefit LMI persons;
- Aid in the prevention or elimination of slums or blight (Slum and Blight); or
- Meet a need having a particular urgency (Urgent Need).

The NYRCR Program is not utilizing the Slum and Blight National Objective at this time.

The following four tests are used for determining whether a project primarily benefits LMI persons and qualifies under the LMI national objective:

1. Area benefit test: The project benefits all residents of a primarily residential area where at least 51% of the residents are LMI persons.
2. Housing benefit test: CDBG-DR assisted housing is occupied by LMI households.
3. Jobs test: At least 51% of the jobs created or retained with CDBG-DR assistance are held by or are available to LMI persons ("available to" means no special education or training is necessary).
4. Limited clientele test: The project is limited to benefiting a specific group of persons, at least 51% of whom are LMI, or is limited to serving LMI person only. Some activities, such as services for elderly people, are presumed to benefit lower income people though the presumption can be challenged based on the facts and circumstances of the project.

As of October 2019, for projects which qualify under the LMI national objective, an **LMI Memo** documenting the qualification is drafted at project closeout.

As of April 2019¹⁰, the data source for determining whether a project qualifies under the LMI national objective is the HUD LMI Summary Data for Local Governments (LMISD) based on the American Community Survey 2011-2015 5-year estimates (2015 ACS), as described in the HUD Notice CPD-19-02. These data replace the prior LMISD based on the American Community Survey 2006-2010 5-year estimates (2010 ACS).

For projects where the 2010 ACS LMISD data determined that the project qualified under the LMI national objective, but the 2015 ACS LMISD for that same geographic area do not demonstrate meeting the LMI national objective, the prior 2010 ACS LMISD may be used to demonstrate area benefit compliance by meeting the following *four-part test* as described in CPD-10-02. In such cases, a **Four Part Test Memo** is drafted for the project to demonstrate compliance with the four-part test and allowable usage of 2010 ACS LMISD data.

Projects that do not qualify under the LMI national objective are classified as Urgent Need (UN). The certification requirements for the documentation of UN located at 24 CFR 570.483(d) have been waived. Instead, the project pre-application report and application must document how the project responds to a disaster-related impact identified by GOSR. In addition to these documents, a project's tie to the disaster is reflected in each project's tie-back memo. The tie-back to the storm memo broadly describes the damage from the storm to the community and how the NYRCR project responds to specific storm damage.

3.13.5 Resilience Performance Standards

HUD requires, through the November 18, 2013 FRN, that GOSR identify and implement resilience performance standards (RPS) to infrastructure projects funded by the P.L. 113-2 grant. The Infrastructure Program does this through the completion of a **Resilience Performance Standards for Infrastructure Projects Review** memo.

Starting in April 2020, the memo is completed for all CR capital projects at project approval. (From August 2018 to March 2020, the memo was completed prior to project closeout). The review memo identifies one or more of the five 'Resilience Qualities' (Robustness, Redundancy, Resourcefulness, Response, and Recovery) that project is designed to address and describe how the project addresses or enhances the resilience quality.

These qualities were refined as part of the Resiliency Institute for Storms and Emergencies (RISE) project that the state funded in order to support the development and refinement of a set of performance standards to measure resiliency within a project. These include:

- Robustness (ability to absorb and withstand disturbances and crises)

¹⁰ Projects which completed closeout prior to April 2019 utilized 2010 ACS data.
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- Redundancy (excess capacity and back-up systems, which enable maintenance of the core functionality in an event of disturbance)
- Resourcefulness (ability to adapt to crises and respond flexibly)
- Response (ability to mobilize quickly in the face of crises)
- Recovery (ability to regain a degree of normality after a crisis)

Starting in April 2020, the **Resilience Performance Standards for Infrastructure Projects Review** memo includes a section to confirm that the project has reached 100% design, that the 100% design has been reviewed by the Project Manager, and that the project as designed conforms to the NYRCR Plan from which the project was selected.

3.13.6 Green Infrastructure Requirements

GOSR undergoes a review of each CDBG-DR funded infrastructure project to determine applicable requirements related to green infrastructure project elements, according to Section VI.2 of the November 18, 2013 FRN (FR-5696-N-06), and identify actions to meet those requirements. The State continues to support projects that restore, enhance, and make more resilient the region's natural resource assets through the use of green infrastructure. GOSR is committed to utilizing green infrastructure when and where possible and feasible for its infrastructure projects.

In the NYRCR planning phase, green infrastructure utilization was promoted via the NY Rising to the Top (NYRTTT) competition. The NYRTTT competition provided winning Planning Committees with additional funds for the implementation of projects in their NYRCR Plans, as described in Section 2.6 above. Both rounds of the NYRTTT competition included "Best Use of Green Infrastructure to Bolster Resilience" as one of the award categories.

In the implementation phase, the project **Application** and **Environmental Review Record** include descriptions of green infrastructure elements where applicable. As of September 2020, the **Project Closeout/Project Cancellation/Subrecipient Switch Review Checklist** includes a question on green infrastructure utilization.

3.13.7 Program Income

The State follows the Program Income requirements of 24 CFR 570.489 consistent with the alternative requirements set out in the March 5, 2013 FRN with regards to program income. Program income is defined in the March 5, 2013 FRN, including commonly for NYRCR purposes, as: the "gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, regardless of when the CDBG funds were appropriated and whether the activity has been closed out." The March 5, 2013 FRN indicates that the Federal awarding agency regulations or the terms and conditions of the federal award may provide for the disposition of program income. GOSR's SRAs require that all program income must be reported and returned to the State by default, but may be

modified for subrecipient program income retention consistent with 24 CFR 570.489(e), and the alternative requirements of the March 5, 2013 FRN.

NYRCR Program staff are responsible for reviewing, identifying and tracking all projects that may generate program income. The subrecipient is also responsible for reporting on whether the activities funded by GOSR will generate revenue or support other revenue generating activities as part of the completion of the **Subrecipient** QPR. For program participants and applicants that do not submit a QPR, it is the responsibility of NYRCR Program staff to identify potential program income.

Subrecipients, applicants, or program participants who self-identify or are identified by NYRCR Program staff as potentially generating program income must fill out a **Program Income Pro Forma** annually, starting in 2018, until the closeout of the SRA, unless GOSR determines otherwise.

If, after reviewing the **Program Income Pro Forma**, the entity has or may generate income in excess of \$35,000 a year, the SRA or PMA must be amended to reflect the generation of program income and how it will be returned to the State or retained by the subrecipient for eligible disaster recovery activities.

At subrecipient closeout (see [Section 3.17](#)), if program income has been or is expected to be generated, all program income is required to be returned to the State, and subrecipients, applicants, and program participants are no longer able to retain program income. Subrecipients, applicants, or program participants are required to complete a final long term pro forma to disclose any anticipated future generation of program income. If former subrecipients, applicants, or program participants generate program income at any time after subrecipient closeout it must be repaid to the State.

3.13.8 Financial Management

In accordance with 24 CFR Part 85.20-26 (as amended by 2 CFR 200) and 24 CFR Part 84.20-28 (as amended by 2 CFR 200), subrecipients must have a financial management system that:

- Provides effective control over the accountability of all funds, property, and other assets;
- Ensures “reasonableness, allowability, and allocability” of all costs and verifies that expenses have not violated any federal restrictions or prohibitions;
- Permits the accurate, complete, and timely disclosure of financial results in accordance with reporting requirements of GOSR and HUD; and
- Minimizes the time elapsed between the transfer of funds from the U.S. Treasury and disbursement by the subrecipient.

GOSR will provide subrecipients with TA on client financial management and will monitor subrecipients’ practices to ensure compliance.

Subrecipients that expend \$750,000 or more in federal funds within a fiscal year must complete and submit to GOSR a copy of their single or program-specific audit report. Subrecipients that do not meet the \$750,000 threshold and thus are not subject to the Single Audit requirements must complete a Single Audit certification (i.e. A-133 Compliance Certification Form) for the most recently concluded fiscal year. (See [Section 3.12.3](#) for more details.)

3.13.9 Green Building Standards

All work to repair or rehabilitate a residential structure must comply with March 5, 2013, FRN (FR- 5696-N-01), which requires non-substantially damaged residential buildings to follow the guidelines specified in the **HUD CPD Green Building Retrofit Checklist** (“Green Building Checklist”). The guidelines provide a description of the Green Building Checklist that can be used by communities undertaking residential rehabilitation activities using Community Development Block Grant - Disaster Recovery (CDBG-DR) funds allocated through the PL 113-2 appropriation for Superstorm Sandy recovery efforts. The PL 113-2 allocation also provides for addressing remaining unmet needs in declared counties impacted by Hurricane Irene and Tropical Storm Lee. These requirements also apply to instances where Hurricane Irene and Tropical Storm Lee recovery efforts are funded in whole or in part by the PL 113-2 allocation.

The Checklist requirements which promote energy efficiency and green building practices for residential retrofit projects were communicated to Subrecipients in May 2020.

3.13.10 Flood Insurance and Substantial Improvement

3.13.10.1 Flood Insurance

Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), GOSR requires subrecipients that receive CDBG-DR funding for acquisition and/or construction purposes are required to obtain and maintain flood insurance in perpetuity for all such property receiving funding that is insurable under the National Flood Insurance Program (NFIP) and located in a Special Flood Hazard Area (SFHA) (also known as the 100-year floodplain),. To the extent possible, flood insurance coverage should be in place prior to the start of CDBG-DR-funded construction. If coverage cannot be obtained because the unimproved asset is not eligible for flood insurance, this requirement is effective—to the extent the improved asset is eligible for insurance—once property is acquired or improvements constructed with CDBG-DR funds. The insurance coverage must equal to the total project cost or the maximum available NFIP coverage, whichever is less.

Additionally, any project that involves the construction or rehabilitation of an insurable structure in the floodplain and is receiving CDBG-DR funds, the subrecipient and/or program participant certifies via the **Previous Flood Insurance Requirements**

Checklist that if previous federal assistance funds were provided for the property, requirements under the NFIP and other relevant statutes or regulations have been adhered to by the entity.

3.13.10.2 Substantial Improvement

Per FEMA regulations (44 CFR 60.3), all new construction and substantially improved (SI) (or substantially damaged (SD)) structures within mapped flood hazard areas must meet specific floodplain development standards. State or locally-adopted requirements that are more restrictive take precedence (often referred to as “exceeding the NFIP minimums” or “higher standards”).

3.13.11 Insurance and Property Management

Subrecipients must procure and maintain insurance for the duration of the SRA to protect all contract assets from loss due to any cause, such as theft, fraud and physical damage. Each subrecipient must maintain fidelity bond coverage for all employees in an amount equal to all cash advances from GOSR. At a minimum, subrecipients must comply with the bonding requirements at 24 CFR 85.36 or 84.48, as applicable and as amended by 2 CFR 200, and with the requirements of their SRA.

If CDBG-DR funds are used to acquire real property or personal property, the subrecipient is responsible for ensuring that:

- The property continues to be used for its intended (and approved) purpose;
- The subrecipient keeps track of, and takes care of, the property; and
- If the subrecipient sells or disposes of the property within five years after expiration of the SRA or a longer period as GOSR deems appropriate, the subrecipient reimburses GOSR for the share of the property’s value according to the SRA.

GOSR SRAs require that subrecipients incorporate GOSR’s Supplementary Conditions for Contracts (Supplementary Conditions) in any contract entered into under the SRA. The Supplementary Conditions require that any contractor providing services to a GOSR subrecipient must obtain and maintain certain types and amounts of insurance coverage. The Supplementary Conditions also provide that GOSR may waive, decrease, alter or amend these insurance requirements in writing.

In addition to general liability insurance, if the subrecipient receives CDBG-DR funding for acquisition and/or construction purposes for property that is insurable under the NFIP and the insurable property is located in a SFHA, the subrecipient will be required to obtain and maintain flood insurance in perpetuity for all such property for which funding is provided. To the extent possible, flood insurance coverage should be in place prior to the start of CDBG-DR-funded construction. If coverage cannot be obtained because the unimproved asset is not eligible for flood insurance, this requirement is effective—to the extent the improved asset is eligible for insurance—once property is acquired or improvements constructed with CDBG-DR funds.

Insurance Waivers- Professional Services Contracts (Contractor)

It is typically the responsibility of GOSR's Chief Financial Officer to determine when a waiver or alteration of insurance requirements is appropriate. However, at their discretion, NYRCR Program staff, in consultation with the Project Delivery Director, may waive additional insurance requirements of a professional services contract when a subrecipient's professional services contractor presents evidence that they carry at least \$2 million of general liability insurance and where the total budget of the relevant contract does not exceed \$1 million. If a contract does not meet these criteria, NYRCR Program staff should consult the Chief Financial Officer before taking further action.

Insurance Waivers- Not Engineering, Design or Construction Contracts (Contractor)

Insurance requirements for subrecipient contracts that are under \$100,000 and not for engineering, design, or construction may be waived or lowered if the subrecipient has met and documented its own insurance requirements through an up-to-date and properly endorsed **Certificate of Liability Insurance**. The subrecipient must request this waiver and NYRCR Program staff must submit the Certificate of Insurance along with a very brief description of the request to waive insurance to the Project Delivery Director. If a material change to the insurance is being required, the Project Delivery Director may consult with the GOSR Contract Administration and Risk Management (ARM) team. After reviewing, the Project Delivery Director will approve or deny the request. NYRCR Program staff inform the subrecipient of the waiver approval and documentation of the waiver approval is uploaded to the GOSR Subrecipient Portal (GSP).

Insurance Waivers- Automobile Insurance (Subrecipient and Contractor)

As long as a subrecipient or their contractors formally certify (by letter from an authorizing official) that they do not own a car and will not use a motor vehicle in carrying out the work for their contract, the requirement for automobile insurance can be waived.

Insurance Waivers- Workers' Compensation (Contractor)

If a firm that a subrecipient contracts with does not have workers' compensation insurance, New York State law requires a Certificate of Attestation of Exemption from Workers' Compensation (Form CE-200). Firms must complete an application, available through the New York State Workers' Compensation Board website, and furnish GOSR with a copy of the certificate. Certificates are only valid for the specific license, permit or contract and the period for which it is issued. Certificates for building permits are job-specific and a separate certificate will be required for each building permit.

3.13.12 Acquisition of Real Property

Upon notification of permission from GOSR, the subrecipient proceeds with efforts to acquire any real property, including easements and right-of-ways, required for the project. CDBG-DR federal funds, administered by GOSR and disbursed to subrecipients and direct contractors and/or beneficiaries, are subject to the URA Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) and/or Section 104(d) of the Housing and Community Development Act of 1974. The applicable

federal regulations are located at 49 CFR Part 24 (URA), 24 CFR Part 42 (Section 104(d)), and in the Tenant Assistance, Relocation and Real Property Acquisition Handbook (HUD Handbook 1378).

Section 104(d) requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses.

Subrecipients or contractors must provide the following benefits to households that they displace:

- Relocation advisory services;
- A minimum of 90 day notice to vacate;
- Reimbursement for moving expenses; and
- Payments for added cost of renting or purchasing comparable replacement housing.

A purchase option agreement on a proposed site or property prior to the completion of the environmental review is allowed if the option agreement is subject to a determination by the subrecipient on the desirability of the property for the project after the environmental review is completed and the cost of the option is a nominal portion of the purchase price. Prior to advertising for bids, the subrecipient should have obtained all lands, rights-of-way and easements necessary for carrying out the project, however, on a case-by-case basis, as determined by the Project Delivery Director, a project may advertise for bids prior to obtaining all lands, rights-of-way, and easements.

GOSR provides subrecipients with templates for: Involuntary Preliminary Acquisition Notice, Invitation to Accompany an Appraiser, Written Offer to Purchase, Statement of Basis of Just Compensation, Notice of Intent Not to Acquire, Donation and Appraisal Waiver, and Administrative Settlement.

GOSR rules, NOFAs applicant certifications and/or written agreements for funds subject to the Uniform Act and Section 104(d) shall refer to federal and State rules, as appropriate.

During subrecipient monitoring, the MCD inquires whether CDBG-DR funds are used to acquire real property, and whether the property is used for its intended (and approved) purpose. If the property is sold under the SRA, the sale proceeds will be treated as Program Income pursuant to Section 3.13.6.

Subrecipients with eminent domain authority may only utilize this authority to acquire property using GOSR funding after discussion with and approval from GOSR.

3.13.13 Davis-Bacon Labor Standards

GOSR's Wage Compliance Unit (WCU), as part of the MCD, conducts regular review of certified payrolls related to CR projects to confirm that the appropriate wage schedules are being followed, and will conduct periodic construction site visits to verify that the wage decisions and other required posters are displayed on the site. GOSR will also conduct periodic employee interviews using form HUD-11 to verify that employees are being correctly classified on the certified payrolls and are being paid the correct wage rate for the classification. In addition to conducting employee interviews using form HUD-11, GOSR may also elect to conduct employee interviews via the US mail using form HUD-4730. GOSR will contact the general contractor to clarify and resolve discrepancies related to underpaid workers, apprentices, improper deductions, fringe benefits and other inconsistent information between payrolls and employee interviews.

In cases where restitution is required, GOSR will send formal notice to the general contractor listing affected workers and the total dollar amount of required restitution. The general contractor will be required to provide evidence of restitution to each worker. If the general contractor is unwilling or unable to make restitution, GOSR may withhold funds equal to the restitution amount.

3.13.14 Force Account Labor

Force account labor (FAL) occurs when subrecipients use their own workforce to complete construction of a NYRCR Program project. This is not the preferred method of construction for GOSR projects. However, it is allowed under certain circumstances. FAL requires advance review and approval by GOSR. Subrecipients that proceed without prior approval risk disallowance of all incurred costs. Subrecipients must justify the use of FAL by demonstrating that this labor is cost effective and that qualified personnel are available to accomplish the work.

3.13.3.13.15 Citizen Participation Plan

Subrecipients that are UGLGs are required to have a written and adopted CPP that complies with the requirements set forth in the State of New York Action Plan for Community Development Block Grant Program Disaster Recovery, dated April 2013, as Amended. A sample CPP and sample resolution for adopting a CPP will be provided by GOSR to all UGLGs. A CPP helps to ensure that all residents have the opportunity to participate in the planning, implementation, and assessment of local recovery and resiliency projects.

3.13.163.13.16 Project Delivery and Project Administration Costs

In general, only subrecipient administrative and project delivery costs incurred after the acceptance of a project application by GOSR and execution of an amendment to the SRA are eligible for reimbursement. While GOSR may provide subrecipients with up to 10 percent of the cost of a project for subrecipient project delivery costs and up to 0.5 percent of the cost of a project for subrecipient administrative costs, depending on the type of project, a subrecipient must submit a detailed justification and budget for all requested administrative and project delivery services as part of the project application, and GOSR must approve these costs. Costs must not be duplicative of services provided by GOSR

through its staff or consultants. All proposed subrecipient administrative and project delivery costs must be determined to be allowable, allocable, and reasonable during the project application review process. For subrecipients providing public services, project delivery costs are not distinguished from project cost.

Examples of project delivery costs include costs directly associated with the delivery of a project, such as staff or third-party compensation for time devoted to implementation of a specific project, public notices and advertisements directly related to a specific project, and legal expenses directly related to a specific project. Examples of project administration costs include costs not directly associated with the cost of a project, such as the costs associated with a subrecipient's completion of a Single Audit (i.e. A-133 Audit Report,).

In certain instances, fringe salary costs may be considered part of project delivery costs. For non-DASNY subrecipient employees who are dedicated to the project for a portion of their time, GOSR may pay the proportionate percentage of their salary, inclusive of fringe benefits. These fringe benefits may include vacation and sick time, if requested by the subrecipient and approved by GOSR.

For subrecipient employees whose time is solely dedicated to a project, GOSR may pay the employee's entire salary (including paid time off), as well as permit the subrecipient to add on fringe benefits for payroll taxes and retirement.

For either case of subrecipient employees, if a subrecipient's employee working on a GOSR project has an overall fringe benefit rate of over 40 percent, Grant Managers must first do an analysis confirming the reasonableness of the fringe benefit. In addition, employees with higher than median fringe benefits for their organization cannot be assigned to the NYRCR project without prior approval from GOSR.

Any project delivery and/or administrative costs for non-DASNY projects added to an **SRA** after September 30, 2016 must be drawn down against community allotments. However, subrecipients that requested project delivery and administrative costs through an original **SRA** or **SRA amendment** executed before September 30, 2016 will not have those funds drawn down from the community allotment. This does not apply to DASNY projects which receive the full DASNY fee (project delivery budget for DASNY personnel performing work on a project) in excess of the community allotment regardless of the date of SRA or **WO**.

Subrecipients who are completing a project for which DASNY was the original subrecipient (i.e., Subrecipient Switch projects) are able to access any DASNY fee not spent by DASNY. The DASNY fee that has been spent is classified as non-allotment. The new Subrecipient receives any unspent DASNY fee up to 10 percent of the project budget in excess of the community allotment as project delivery and administration. Any unspent DASNY fee that is greater than 10 percent of the allotment is given back to the community allotment.

For example, Project X, with a WO allotment budget of \$3,000,000, is undergoing a Subrecipient switch. The DASNY fee is \$470,000 and \$150,000 has been spent. Upon the switch, the new Subrecipient will receive \$150,000 in project delivery and administration because the original 10% of the allotment value was \$300,000 and \$150,000 had already been spent by DASNY. The remaining \$170,000 of the previous DASNY fee is given to the new Subrecipient's allotment.

3.13.17 Procurement

Subrecipients must follow federal, State and local procurement rules when purchasing services, supplies, materials or equipment. The procurement requirements found at 2 CFR 200.317-326 establish CDBG-DR standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services. Subrecipients must also follow applicable conflict of interest provisions in federal, State, and local regulations. If a real or perceived potential conflict of interest is identified, subrecipients must contact GOSR for further guidance.

Prior to entering into a professional services or construction contract, subrecipients shall vet vendors (also referred to as contractors) as follows:

- Subrecipients shall require proposed vendors to complete a vendor responsibility questionnaire (VRQ). The VRQ will depend on the type of contractor (for-profit or non-profit) as well as type of project (construction or non-construction).
- Subrecipients shall review the VRQ and conduct their own vetting (using the GOSR Business Integrity Guide) which includes a federal and State debarment search, and return the completed Business Integrity Determination Form to GOSR along with names of Project Managers and Grant Managers, the completed VRQ and any correspondence with the proposed vendor. Contractors or subcontractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and GOSR will not award or consent to contracts or subcontracts with these contractors.
- In accordance with the GOSR Business Integrity Guide, GOSR will review the submitted materials. Contractors or subcontractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and GOSR will not award or consent to contracts or subcontracts with these contractors.

To help assure that subrecipients' procurements will be in compliance with regulations, GOSR provides subrecipients with RFP/Q procurement templates. GOSR will also provide procurement TA consisting of:

- Review of 2 CFR 200.320 procurement requirements related to competitive proposals and small purchases;
 - The GOSR Technical Advisor determines if a constructability and code compliance review is necessary. This determination is documented and uploaded to the GSP. If necessary, a constructability and code compliance

review is completed either by DASNY, the subrecipient's in-house licensed engineer, or a third party.

- Upon completion of review, a satisfaction letter is issued and uploaded to the GSP.
 - If a subrecipient's in-house licensed engineer is completing the review, they inform GOSR that the review is complete via email, memo, or an approval stamp on the design drawings.
- DASNY will always complete a constructability and/or code compliance review on projects they are the subrecipient for.
- In addition to the constructability and code compliance reviews, State agencies review projects as needed for permitting; and
- Review of subrecipient procurement documents, with TA as necessary.

GOSR will also review draft procurement documents and a procurement record before consenting to the subrecipient entering into a contract with a selected consultant or contractor. GOSR will not review any documents in advance of a micro-purchase, which is a purchase under \$3,500. However, subrecipients must demonstrate cost reasonableness when they seek reimbursement from GOSR.

Professional Services

In order to develop a detailed project description and a conceptual cost estimate for a project application, GOSR or the subrecipient may engage the services of professional architects or engineers. If the subrecipient engages the architect or engineer directly, the subrecipient must comply with CDBG-DR procurement guidelines. The scope of the procurement may also include future services for design, surveying, and construction inspection/representation services.

As of June 2020, Subrecipients who proceed with authorizing the design professional to proceed with any services other than those necessary for the preparation of the application until the NYRCR Program formally accepts the project application and issues contract consent do so at their own risk, as those services may be ineligible for reimbursement. For costs incurred prior to application acceptance and contract consent prior to June 2020, GOSR may reimburse for that work based on review for eligibility of costs.

As noted above, GOSR provides subrecipients with RFP/Q procurement templates, reviews the procurement record (including executing a **Sealed Bidding, Award and Contract Execution Checklist**), provides consent for the subrecipient to enter into the contract, provides guidance on the contract scope, and reviews the subrecipient's A/E contract for HUD compliance prior to the subrecipient entering into the contract.

Construction Services

GOSR issues a notice authorizing the subrecipient to advertise for bids following the completion of:

- A review of plans and specifications and completion of a **Bid Document Review Checklist** by GOSR;
- As appropriate, a review of plans and specifications for code compliance by DASNY, a subrecipient's in-house licensed engineer, or a third party. DASNY will perform this review as a matter of course when the project is being implemented by DASNY. When another state agency performs an engineering review of a project, GOSR will not require an additional constructability and code compliance review.
- Environmental clearance of proposed construction activities;
- Verification that all lands, rights-of-way and easements have been acquired; and
- Verification that all other program requirements have been met.

After authorization to advertise for bids has been issued, the subrecipient may proceed with public advertising for bids in accordance with federal, State, and local procurement standards. Generally, under New York law, local governments are required to advertise for competitive bids for public work contracts in excess of \$35,000. However, if the subrecipient is subject to other State or municipal procurement guidelines, the strictest threshold should be applied to the procurement. The contract should be awarded to the lowest priced responsible bidder that has complied with the specifications. In some cases, the lowest bid received will exceed the amount of funds allocated for the project. When this happens, the subrecipient must contact GOSR to determine the best option to proceed.

Before the subrecipient can enter into a contract for construction services, GOSR must issue contract consent.

GOSR issues contract consent after verifying the following using the **Sealed Bidding, Award and Contract Execution Checklist**:

- The advertisement of bids was competitive and compliant with federal, State, and local requirements;
- The lowest responsive responsible bidder submitted a M/WBE and Section 3 utilization plan which met the goals, or provided documentation of sufficient Good Faith Efforts (GFE) and Greatest Extent Feasible (GEF) effort;
- The Business Integrity Determination forms have been completed and reviewed by GOSR, and no issues identified,
- The documentation of bid bonds have been submitted and are in compliance with the bid documents;
- The construction contract is within the scope and budget of the latest **SRA** amendment; and
- The **Application for Funding** has been approved.

Multi-Funded Contracts

A project, as defined by all components that make up a GOSR application, may include multiple funding sources by 1) incorporating CDBG-DR funding and another source(s) of

funding into one contract, and/or by 2) letting multiple contracts that are part of the same project but utilize different funding sources for each contract. It is important that CDBG-DR funds never displace other available grant funds, and thus CDBG-DR funds should be used as the funding source of last resort in accordance with OOA requirements (see [Section 3.13.2](#)). If other non-CDBG-DR grant funds have been awarded, OOA and DOB checks are used to ensure that CDBG-DR funds are not displacing other grant funds.¹¹

For contracts that incorporate both CDBG-DR funding and other funding source(s) GOSR, CDBG-DR requirements apply to the entire contract. GOSR monitors these contracts for compliance and requires the subrecipient to submit documentation of all invoices, regardless of if they are paid for by CDBG-DR funds.

For contracts that have no GOSR CDBG-DR funding, but are part of a GOSR CDBG-DR funded project, some CDBG-DR requirements still apply, and must be incorporated into those contracts. GOSR reviews these contracts to ensure the necessary requirements are included. These contracts may also be part of GOSR monitoring/audit efforts.

3.13.18 Canceled Projects

As of October 10, 2017, all NYRCR projects will be identified through a submitted application, with exceptions on a case-by-case basis if a project undertaken on or before October 10, 2017 is required to inform a future project's application. The October 10, 2017 deadline also does not apply to projects where the subrecipient is DASNY. These exceptions should be documented in a memo to the file of the current project being undertaken. Projects that will not complete an eligible activity within the CDBG-DR grant deadlines that meet one of the following requirements must be canceled:

1. Funds have been disbursed to the subrecipient, or
2. the Application for Funding has been accepted.¹²

A change in subrecipient or dropping of a project component is not a canceled project. Changes such as a subrecipient switch or the dropping of a project component are memorialized through the controlling document at any given stage, such as the SRA amendment.

A subrecipient may work with GOSR to cancel a project for the following reasons:

- Findings from the environmental review;
- Cost reasonableness;
- Feasibility;
- Costs of other projects within a community's allotment;
- Eligibility;

¹¹ Note that local funds through loans or bonds do not violate order of assistance requirements, and those funds are only expected to make up the shortfall between the project cost and the available grant funds.

¹² Any projects that do not meet these requirements are not required to go through the NYRCR cancellation procedure. Any files saved to date are archived and the project is marked as canceled in the GSP

- Lack of support for project by property owners/beneficiaries;
- Subrecipient or contractor failure to comply with GOSR policy and procedure.

In order to minimize the amount of funds expended on a project that will not be implemented, projects that run into any of these barriers should be canceled as soon as it has become apparent that the subrecipient is no longer able to complete the project eligibly within the CDBG-DR grant deadlines. It is at GOSR's discretion to reprogram any funds allocated to canceled projects. GOSR works with subrecipients to review projects for their feasibility to meet the deadlines to help ensure projects that proceed will not be at risk of cancellation.

Unresponsive Subrecipients

When a subrecipient is unresponsive or unwilling to advance a project it has agreed to advance, the NYRCR Program may cancel the project.

The unresponsive subrecipient is given two notification attempts to respond to the Program and document why the project has not advanced and when the subrecipient will advance the project before the project is canceled. NYRCR Program Staff and Grant Manager must follow and document all efforts to notify the subrecipient. For each notification attempt, NYRCR Program Staff and Grant Manager must contact the subrecipient via email and certified mail.

3.14 Subrecipient Withdrawal

Subrecipient withdrawals from their agreements with GOSR are governed by the SRA.

3.15 Subrecipient Switch

After consulting with a subrecipient, GOSR may replace a subrecipient with a new subrecipient to advance a project. Changing a subrecipient should typically be undertaken when: (1) the cost of completing a project under one subrecipient is significantly higher than what it would cost to complete the project under another subrecipient, or (2) when one subrecipient is no longer willing or capable of completing a project and another subrecipient is available and capable of completing the project within the allotted budget. There are some circumstances when a subrecipient switch would lead to an increase in the project budget. This should only be done at the discretion of the project team with the approval of the NYRCR Executive Director, and when additional funding is available. In the event of a subrecipient switch, the NYRCR Program will ensure that all documentation is on file and there is a smooth transition between subrecipients.

3.16 Recapture

GOSR is responsible for ensuring that CDBG-DR funds awarded through the NYRCR Program comply with all federal, State and local requirements. To ensure subrecipients receiving CDBG-DR assistance are using the funds for their intended purpose, GOSR requires all subrecipients to execute an SRA stipulating each party's responsibilities and the potential penalties if the subrecipient is found not to have fulfilled their obligations. Specifically, the agreement requires the subrecipient to return any and all CDBG-DR

funds to GOSR which are found to be ineligible, unallowable, unreasonable, a DOB or non-compensable, no matter the cause.

Throughout a project's lifecycle, iterative steps are taken by NYRCR Program and GOSR staff, such as the MCD, to monitor for and address subrecipient compliance concerns. These iterative steps provide subrecipients an opportunity to avoid the actions or adequately rectify the actions that could lead to recapture. However, the NYRCR Program may use recapture as a method to encourage compliance and as a tool of last resort to rectify non-compliance when subrecipients are unable or unwilling to adequately address non-compliant actions.

Conditions for Recapture of Funds from a Subrecipient

Subrecipients are at risk for recapture of previously paid GOSR funds if GOSR identifies subrecipient non-compliance with GOSR policies and/or CDBG-DR regulations. These actions include but are not limited to:

1. Ineligibility of previously reimbursed item;
2. Subrecipient substantial non-compliance
 - a. Including issues related to:
 - i. Davis Bacon
 - ii. Environmental review
 - iii. Mismanagement of funds on an individual project basis, across projects or on a subrecipient level
 - iv. Procurement or contract management
 - v. Obtaining and maintaining flood insurance
 - vi. SRA non-compliance
 - vii. Failure to meet a national objective or HUD eligible activity
 - viii. Missing or late submittal of Single Audits or Single Audit Certification Form (i.e. A-133 Audit Report, A-133 Compliance Certification Form)
 - ix. Results from a HUD Office of Inspector General audit
3. DOB or OOA compliance issue identified;
4. Subrecipient fraud, waste or abuse on an individual project basis, across projects or on a subrecipient level; and
5. Subrecipient voluntary or involuntary withdrawal from a project, leading to project lack of completion.¹³

Funds to be recaptured are identified at a project level, not across multiple projects, should a subrecipient have multiple active projects at one time. However, should a subrecipient with multiple active projects be in recapture due to a concern that impacts all

¹³ While a subrecipient withdrawal from a project may lead to recapture, if a subrecipient is able to demonstrate to GOSR that it undertook good faith efforts to complete the project and that it was forced to withdraw from completing the project due to circumstances beyond its control, GOSR may determine that recapture is not necessary.

or multiple projects, GOSR will withhold all payment on the subrecipient's active projects in question until recapture proceedings are complete.

The amount of money identified for recapture will be the minimum amount of money GOSR believes is non-compliant and/or at risk of recapture from HUD.

3.17 Subrecipient Closeout

Subrecipient closeout is undertaken by the Program once the final Project Closeout/Cancellation Checklist(s) (see [Section 3.10](#)) is completed. NYRCR and GOSR Program staff complete a **Subrecipient Closeout Checklist**. Once the checklist is completed, the subrecipient is notified that its CDBG-DR award is closed out and the SRA has been terminated.

3.18 Records Retention

Required NYRCR project documents are filed in the GSP. The NYRCR program updated its document retention procedures in March 2020 to provide clearer guidance on which documents are required and where required documents shall be filed. These procedures build upon the NYRCR CDBG Model Record Filing System document. These updated record retention procedures are outlined in the NYRCR Records Retention Standard Operating Procedure (SOP) and NYRCR Required Document Matrix. The NYRCR Required Document Matrix provides a crosswalk of all documents maintained by the program.

Project files are audited prior to closeout; the NYRCR program updated its records retention procedures in March 2020 as noted in the program's internal recordkeeping methodology to routinely audit the presence of all supporting documentation for each project via checklists. Audit checklists ensure that project documents are appropriately filed; documents are cross-filed for multiple projects when required, and project assessments are completed based on the project's specific scope of work. Corrective actions such as memos to file may be utilized when missing documents are identified.

The NYRCR program also updated its procedures in March 2020 to include an internal control to ensure that the titled members of NYRCR staff specified in program policies and procedures have signed documents for which their signatures are required. Trainings on recordkeeping requirements, project oversight, and supervisory review of documents are held for project managers and supervisors as needed.

3.19 Covered Projects Requirements

In the November 18, 2013 FRN (FR-5696-N-06), HUD included requirements for the funding of Infrastructure Programs: "HUD approval is required for each major infrastructure project with such projects defined as having a total cost of \$50 million or more (including at least \$10 million of CDBG-DR funds), or benefits multiple counties. Additionally, two or more *related infrastructure projects* that have a combined total cost

of \$50 million or more (including at least \$10 million of CDBG-DR funds) must be designated as major infrastructure projects.”

Covered Project requirements include placing additional reporting and consultation requirements on grantees. GOSR will be administering projects which meet the Covered Project criteria through the PA Match Program as well as in the NYRCR Community Reconstruction Program. GOSR engages when applicable with the Sandy Regional Infrastructure Resilience Coordination Group (SRIRC) and HUD to ensure compliance with these processes. GOSR will submit all Covered Projects to HUD as required through a substantial Action Plan Amendment and address the following requirements as outlined in the November 18, 2013 FRN (FR-5696-N-06); the October 14, 2014 FRN (FR-5696-N-11), and any other FRNs issued for P.L. 113-2. As part of these requirements, GOSR must publish each Substantial Action Plan Amendment for comment for thirty (30) days prior to submission to HUD. For each identified Covered Project, GOSR will provide the following information as required in the applicable FRNs:

1. **Identification/Description.** A description of the Covered Project, including: Total exact project cost or an estimated project cost along with the expected timeline for determining exact costs, how it will meet a national objective, and the project’s connection to the disaster.
2. **Use of Impact and Unmet Needs Assessment, the Comprehensive Risk Analysis and the Rebuild by Design (RBD) Collaborative Risk Analysis.** A description of how the Covered Project is supported by GOSR’s updated impact and unmet needs assessment, as well as the GOSR’s comprehensive risk analysis. The description must describe how Covered Projects address the risks, gaps, and vulnerabilities in the region as identified by the comprehensive risk analysis. Additionally, the description must also describe how the collaborative risk analysis developed through the Rebuild by Design (RBD) initiative has been or will be used for the evaluation of Covered Projects.
3. **Transparent and Inclusive Decision Processes.** A description of the transparent and inclusive processes that have been or will be used in the selection of a Covered Project(s) including accessible public hearings and other processes to advance the engagement of vulnerable populations. GOSR should demonstrate the sharing of decision criteria, the method of evaluating a project(s), and how all project stakeholders and interested parties were or are to be included to ensure transparency including, as appropriate, stakeholders and parties with an interest in environmental justice or accessibility.
4. **Long-Term Efficacy and Fiscal Sustainability.** A description of how GOSR will monitor and evaluate the efficacy and sustainability of Covered Projects, including how it will reflect changing environmental conditions (such as sea level rise or development patterns) with risk management tools, and/or alter funding sources if necessary.

5. **Environmentally Sustainable and Innovative Investments.** A description of how the Covered Project(s) will align with the commitment expressed in the President’s Climate Action Plan to “identify and evaluate additional approaches to improve our natural defenses against extreme weather, protect biodiversity, and conserve natural resources in the face of a changing climate...”.

3.20 Coordination with the Sandy Regional Infrastructure Resilience Coordination Group (SRIRC)

HUD encourages CDBG-DR grantees of covered projects to consult the Regional Coordination Working Group prior to the inclusion of a covered project in their Action Plan. When applicable, GOSR coordinates with the SRIRC in an effort to promote a regional and cross-jurisdictional approach to resilience in which neighboring communities come together to: identify interdependencies among and across geography and infrastructure systems; compound individual investments toward shared goals; foster leadership; build capacity; and share information and best practices on infrastructure resilience.

4.0 Acronyms and Definitions

4.1 Acronyms

Acronym	Name
ADA	Americans with Disabilities Act of 1990
A/E	Architectural and Engineering
AUD	New York State Comptroller Annual Update/Financial Report
ARM	GOSR Contract Administration and Risk Management
AUGF	Authority to Use Grant Funds
BERA	GOSR Bureau of Environmental Review and Assessment
CBA	Cost Benefit Analysis
CDBG-DR	Community Development Block Grant - Disaster Recovery
CBDO	Community Based Development Organization
CDP	Census-Designated Place
CEQR	City Environmental Quality Review
CPP	Citizen Participation Plan
CRR	Cost Reasonableness Review
DASNY	The Dormitory Authority of the State of New York
DBRA	Davis-Bacon Act and Related Acts
DCR	GOSR Office of Diversity and Civil Rights
DHAP	HUD Disaster Housing Assistance Program
DOB	Duplication of Benefits
DOS	New York State Department of State
DRGR	Disaster Recovery Grants Reporting
EA	Environmental Assessment
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EMMIE	FEMA Emergency Management Mission Integrated Environment Database
ERR	Environmental Review Record
ESD	New York State Empire State Development Corporation
FAL	Force Account Labor
FEMA	Federal Emergency Management Agency
FHA	Fair Housing Act
FHEO	Fair Housing & Equal Opportunity
FOIL	Freedom of Information Law
FRN	Federal Register Notice
FVL	Full Verified Loss
GEF	Greatest Extent Feasible
GFE	Good Faith Effort
GOSR	Governor's Office of Storm Recovery
GSP	GOSR Subrecipient Portal
HCDA	Housing and Urban Development Act of 1968
HCR	New York State Homes and Community Renewal
HMGP	FEMA Hazard Mitigation Grant Program
HTFC	New York State Housing Trust Fund Corporation

HUD	U.S. Department of Housing and Urban Development
IA	FEMA Individual Assistance
ICE	Independent Cost Estimate
LAP	Language Assistance Plan
LEP	Limited English Proficiency
LMI	Low- and Moderate-Income
LMISD	HUD Low- and Moderate-Income Summary Data for Local Governments
LTRG	Welfare Council of Long Island/Long Island Long Term Recovery Group
MBE	Minority-Owned Business Enterprise
MCD	GOSR Monitoring and Compliance Department
MOU	Memorandum of Understanding
M/WBE	Minority/Women-Owned Business Enterprise
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NOFA	Notice of Funding Availability
NTP	Notice to Proceed
NYRCR	NY Rising Community Reconstruction Program
NYRTTT	NY Rising to the Top
NYSSROP	New York State Storm Recovery Opportunities Portal
OOA	Order of Assistance
PA	FEMA Public Assistance
PMA	Project Management Agreement
QPR	Quarterly Performance Report
RBD	Rebuild by Design
RFP	Request for Proposals
RFQ	Request for Qualifications
RISE	Resiliency Institute for Storms and Emergencies
RPS	Resilience Performance Standards
RROF	Request for Release of Funds
SBDC	Small Business Development Center
SD	Substantially Damaged
SFHA	Special Flood Hazard Area
SEQRA	State Environmental Quality Review Act
SI	Substantially Improved
SIRR	Sandy Initiative for Rebuilding and Resiliency
SOP	Standard Operating Procedure
SRA	Subrecipient Agreement
SRIRC	Sandy Regional Infrastructure Resilience Coordination Group
TA	Technical Assistance
UGLG	Units of General Local Government
UN	Urgent Need
URA	Uniform Relocation Assistance and Real Property Acquisition Act of 1970
USACE	United States Army Corps of Engineers

VRQ	Vendor Responsibility Questionnaire
WBE	Women-Owned Business Enterprise
WCU	GOSR Wage Compliance Unit
WO	Work Order

4.2 Definitions

100-Year Floodplain (also referred to as "Base Flood"): This term, adopted by the NFIP as the basis for mapping, insurance rating, and regulating new construction, is the flood plain that would be inundated in the event of a 100-year flood. The 100 year flood has a one percent chance of being equaled or exceeded during any given year.

Action Plan: The public document required by the U.S. Department of Housing and Urban Development (HUD) that details the NY Rising Recovery Programs and how the grantee plans to allocate Community Development Block Grant-Disaster Recovery (CDBG-DR) funds.

Activity Beneficiaries: the population, for the purpose of HUD LMI reporting, deemed to be benefiting from the expenditure of CDBG-DR funds. Activity Beneficiaries are generally measured by persons or households and can be determined either on an area basis (by delineating a project's service area and calculating the population within its boundaries), or on a direct benefit basis (by counting the individual persons or households deemed to be directly benefitting from the project).

Additional resiliency recommendation: Additional Resiliency Recommendations are projects and actions that the Planning Committee wanted to highlight but were not categorized as proposed or featured projects. It was not anticipated that CDBG-DR funds would be used to implement the recommendations in this category.

Applicant: A municipality or an eligible non-profit that is partnering with DASNY on a project and has submitted an accepted application to the NYRCR Program

Citizen Participation Plan (CPP): The New York State Citizen Participation Plan provides New York citizens an opportunity to participate in the planning, implementation, and assessment of the State's Community Development Block Grant-Disaster Recovery (CDBG-DR) program. The Plan sets forth policies and procedures for citizen participation, in accordance with federal regulations, which are designed to maximize the opportunity for citizen involvement in the community development process. For more information, see the Introduction and/or Exhibit 2 of this manual.

City Environmental Quality Review (CEQR): As mandated by the State Environmental Quality Review Act (SEQRA), CEQR is the process by which New York City agencies determine what effect, if any, a discretionary action they approve may have upon the environment.

Community Development Block Grant-Disaster Recovery (CDBG-DR): Flexible grants provided by the U.S. Department of Housing and Urban Development (HUD) to

help cities, counties, and States recover from Presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations. In response to Presidentially declared disasters, Congress may appropriate additional funding for the Community Development Block Grant (CDBG) program as Disaster Recovery grants to rebuild the affected areas and provide crucial seed money to start the recovery process. Since CDBG Disaster Recovery (CDBG-DR) assistance may fund a broad range of recovery activities, HUD can help communities and neighborhoods that otherwise might not recover due to limited resources.

Competitive selection: Under the competitive selection method, NYRCR Program Staff issue a notice of funding availability (NOFA) or a request for qualifications or proposals (RFQ/P) to solicit proposals from eligible non-profit or public organizations to implement the projects or programs in certain communities. The NOFA/RFQ/P includes the scoring criteria and the selection methodology used to select eligible subrecipients.

Contractor: A governmental agency, private non-profit, private for-profit, or Community Based Development Organization (CDBO) that must be selected through a competitive procurement process. The main difference between a subrecipient and a contractor is that a subrecipient can be non-competitive and designated by the grantee. (See definitions of subrecipient and procurement below.)

Cost Benefit Analysis (CBA): Cost Benefit Analysis is the process of developing a cost estimate for the project while also writing a qualitative analysis profiling potential benefits and costs of the project. In instances that a benefit associated with a project was quantifiable, and the degree of the benefit could be determined with reasonable effort, the quantity of the benefit was included in the discussion. To read more, see [Section 2.4.6](#).

Davis Bacon Wage Requirements: The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.

Department of Housing and Urban Development (HUD): Federal department through which the Program funds are distributed to grantees.

Direct Selection: Under the direct selection method, NYRCR Program Staff identify an appropriate subrecipient by considering opportunities to build capacity at the most local levels of government, jurisdiction over any assets that are essential to the project, existing project and financial management capacity, and any other considerations specific to the project being implemented. GOSR's ability to directly select a qualified subrecipient is allowed under HUD Section 24 CFR 570.500(c).

Duplication of Benefit (DOB): Duplication of Benefits (DOB) occurs when financial assistance received from one source is provided for the same purpose as CDBG-DR funds provided, in accordance with HUD DOB guidance, found at 76 FR 71060, November 16, 2011.

Ecosystem Restoration: Ecological restoration is the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed.

Environmental Assessment (EA): A concise public document that a Federal agency prepares under the National Environmental Policy Act (NEPA) to provide sufficient evidence and analysis to determine whether a proposed agency action would require preparation of an environmental impact statement (EIS) or a finding of no significant impact. A Federal agency may also prepare an EA to aid its compliance with NEPA when no EIS is necessary or to facilitate preparation of an EIS when one is necessary. An EA must include brief discussions of the need for the proposal, alternatives, environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. (See environmental impact statement and National Environmental Policy Act.)

Environmental Impact Statement (EIS): The detailed written statement that is required by Section 102(2)(C) of the National Environmental Policy Act (NEPA) for a proposed major Federal action significantly affecting the quality of the human environment. The statement includes, among other information, discussions of the environmental impacts of the proposed action and all reasonable alternatives, adverse environmental effects that cannot be avoided should the proposal be implemented, the relationship between short-term uses of the human environment and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources.

Exposure: Exposure refers to the local landscape characteristics that tend to increase or decrease storm effects. It is one of the three factors identified in the risk assessment tool developed by the New York State Department of State for the NYRCR Program.

Fair Housing Act: Title VIII of the Civil Rights Act, 42 U.S.C. 3601. The Fair Housing Act is a broad statute that prohibits discrimination based upon race, color, religion, sex, national origin, disability, or familial status in most housing and housing-related transactions.

Featured project: Featured Projects are projects and actions that the Planning Committee identified as important resiliency recommendations and analyzed in-depth, but did not propose for funding through the NYRCR Program with CDBG-DR funding.

Federal Emergency Management Agency (FEMA): An agency of the United States Department of Homeland Security. The agency's primary purpose is to coordinate the response to a disaster that has occurred in the United States and that overwhelms the resources of local and state authorities.

Floodplain (also known as the "Base Flood"): The low, flat, periodically flooded lands adjacent to rivers, lakes and oceans and subject to geomorphic (land-shaping) and hydrologic (water flow) process. The 100-year floodplain is the land that is predicted to flood during a 100-year storm, which has a 1percent chance of occurring in any given year. Areas within the 100-year floodplain may flood in much smaller storms as well. The 100-year floodplain is used by FEMA to administer the federal flood insurance program.

Flood Zones: The land areas identified by the Federal Emergency Management Agency (FEMA). Each flood zone describes that land area in terms of its risk of flooding. Everyone lives in a flood zone it's just a question of whether you live in a low, moderate, or high risk area.

Force account labor: Force account labor occurs when subrecipients use their own workforce to complete construction of a NYRCR Program project. Force account labor requires advance review and approval by GOSR and subrecipients who proceed without prior approval risk disallowance of all incurred costs. Subrecipients must justify the use of force account labor by demonstrating that this labor is cost effective and that qualified personnel are available to accomplish the work.

Full Verified Loss (FVL): The amount of loss (in dollars) after a FEMA inspector conducts a field inspection of damaged Personal Property (contents) after a household applies for Individual Assistance (IA).

Governor's Office for Storm Recovery (GOSR): The division of the Housing Trust Fund Corporation established by Governor Cuomo in June 2013 to maximize the coordination of recovery and rebuilding efforts in storm-affected municipalities throughout New York State.

Hazard: Hazard refers to the likelihood and magnitude of anticipated hazard events. It is one of the three factors identified in the risk assessment tool developed by the New York State Department of State for the NYRCR Program.

Homes and Community Renewal (HCR): New York State unified leadership platform, encompassing a variety of New York State agencies and public benefit corporations involved in the provision of housing and community renewal.

Housing Trust Fund Corporation (HTFC): New York State agency through which Program funds are administered to applicants and other sub-recipients.

Individual Assistance (FEMA): The federal program and activities that help individuals and households recovery following a disaster.

Low- and Moderate- Income (LMI): Low- and moderate-income people are those who have incomes not more than the "moderate-income" level (80 percent Area Median Family Income) set by the federal government for the HUD assisted Housing Programs.

This income standard changes from year to year and varies by household size, county and the metropolitan statistical area.

Minority-Owned Business Enterprise (MBE): As defined by Article 15-A of the Executive Law, an MBR enterprise is a business enterprise that is:

- At least 51 percent owned by one or more United States citizens or permanent resident aliens who are minority group members;
- An enterprise in which such minority ownership is real, substantial and continuing;
- An enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the business enterprise;
- An enterprise authorized to do business in this State and is independently owned and operated; and,
- An enterprise owned, either directly or through a holding company, by an individual or individuals, whose ownership, control and operation are relied upon for certification, with an individual personal net worth at the time of application that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year starting in 2011.

Minority/Women-Owned Business Enterprise (M/WBE): As defined by Article 15-A of the Executive Law, Women and Minority-Owned Business Enterprises (M/WBE) are business where at least 51 percent of the business is owned by either women or minorities. For more information see the definition of Minority-Owned Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE).

National Environmental Policy Act (NEPA): Establishes a broad national framework for protecting the environment. NEPA's basic policy is to assure that all branches of government give proper consideration to the environment prior to undertaking any major federal action that could significantly affect the environment.

National Objective: A HUD criteria governing the eligible uses of CDBG-DR funds.

Non-DASNY Project Management Agreement (Non-DASNY PMA): An agreement between a subrecipient (other than DASNY) and a program participant that will own and maintain a final project that grants the subrecipient right of entry to implement a proposed project and obligates the program participant to follow applicable state and federal rules and regulations, and GOSR program requirements. This agreement is specific to each project and is always between the subrecipient and the program participant.

NYRCR Plan: The NYRCR Plan is a document submitted to the Governor's Office for Storm Recovery at the end of the NYRCR Planning Process. The document contains multiple projects eligible for consideration in the implementation phase of the NYRCR

process. In implementation, the State chooses projects from the Planning Committee's NYRCR Plan and awards funding for the development of projects on a staggered basis.

Planning Area: An NYRCR Planning Area is a storm-impacted location where an NYRCR Planning Committee focuses its strategy for recovery. There are 61 NYRCR Planning Areas comprising 119 communities across New York State.

Planning Committee: An NYRCR Planning Committee is a group of community members—local residents, business owners, and civic leaders—who engage with their broader public to encourage participation in the recovery planning process, solicit feedback and ideas for innovative projects, and build support for implementation of NYRCR Plans.

Planning Committee Member: Individual who volunteered to serve on a Planning Committee.

Person with Disabilities: A person with disabilities for purposes of program eligibility:

- 1) Means a person who:
 - a) Has a disability, as defined in 42 U.S.C. 423;
 - i) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or
 - ii) In the case of an individual who has attained the age of 55 and is blind, inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he/she has previously engaged with some regularity and over a substantial period of time. For the purposes of this definition, the term blindness means central vision acuity of 20/200 or less in the better eye with use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for the purposes of this paragraph as having a central visual acuity of 20/200 or less.
 - b) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
 - i) Is expected to be of long-continued and indefinite duration,
 - ii) Substantially impedes his or her ability to live independently, and
 - iii) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
 - c) Has a developmental disability, as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(8)).

Procurement Process: The process by which contractors are selected to work for a particular organization or agency.

Project Management Agreement (PMA): A three party agreement among GOSR, DASNY, and the program participant that will own and maintain the final project. The agreement grants DASNY right of entry to implement the proposed project and obligates the program participant to follow applicable state and federal rules and regulations, and GOSR program requirements. This agreement is specific to each project and is always among GOSR, DASNY and each program participant(s).

Program Income: Pursuant to 24 CFR 570.489, program income is the gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG funds.

Program Participant: A program participant is an eligible jurisdiction or entity that will ultimately own and maintain the NYRCR project. All program participants must sign a PMA. A subrecipient may be a program participant but in some cases, is not.¹⁴

Proposed Project: Proposed Projects are projects proposed for funding through an NYRCR Planning Committee's allotment of CDBG-DR funding. In most instances, NYRCR Planning Committees elect to include Proposed Projects that, in their aggregate estimated cost, exceed the Community's approved allotment. This allows for flexibility in the event that some Proposed Projects are ineligible because of environmental review, CDBG-DR eligibility, technical feasibility, or other factors identified upon further project review.

Public Engagement Event: Large scale event—such as an open house, workshop, or public information session—held at four key milestones in the planning process to solicit input from the general public.

Request for Proposals (RFP): A procurement document designed to solicit proposals for services where cost is considered as a factor.

Section 3: Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

Slum and Blight: The elimination of slums and blight is a US Department of Housing and Urban Development (HUD) National Objective for the use of Disaster Recovery

¹⁴ In earlier NYRCR Program documents, program participants were called project beneficiaries. Because “project beneficiaries” is a term used by HUD to convey a different meaning, GOSR’s Legal Department changed the reference to project beneficiary to program participant in the Project Management Agreement and the NYRCR Program adopted this terminology.

funds. The focus of activities under this national objective is a change in the physical environment of a deteriorating area.

State Environmental Quality Review Act (SEQRA): SEQR establishes a process to systematically consider environmental factors early in the planning stages of actions that are directly undertaken, funded or approved by local, regional and state agencies. By incorporating environmental review early in the planning stages, projects can be modified as needed to avoid adverse impacts on the environment.

Stormwater Management: The process of controlling the runoff from precipitation that primarily flows off of impervious surfaces like parking lots, driveways, sidewalks, and roof tops. Unchecked stormwater flows from these hard surfaces to streets and gutters, which carry the untreated runoff to nearby receiving waters. Because stormwater runoff does not go to a treatment plant before discharging into the area's receiving waters, it transports pollutants that collect on the above-mentioned hard surfaces, like motor oil, litter, trash, debris, and sediment; it also picks up other materials that come from vegetated areas like lawn fertilizers, pesticides, grass clippings, and leaves; all of these items can negatively impact the water quality of the area's receiving waters.

Subrecipient: Subrecipients (sometimes referred to as “subgrantees”) are entities that are provided CDBG funds by a grantee for their use in carrying out agreed-upon, eligible activities. There are four basic kinds of subrecipients: government agencies, private non-profits, private for-profits, and Community Based Development Organizations (CBDOs).

Sub-subrecipient: An indirect subrecipient of the program that is lower tier to a subrecipient that is party to a subrecipient agreement directly with the Grantee (GOSR). The contractual relationship between subrecipient and sub-subrecipient is analogous to the contractual relationship between the Grantee (GOSR) and subrecipient. The Sub-subrecipient agreement is, most notably, for the performance of a substantive portion of the project funded under the subrecipient agreement with Grantee. All provisions in a subrecipient agreement to which a subrecipient is subject are passed down to a sub-subrecipient through a sub-subrecipient agreement.

Subrogation: The process by which duplicative assistance paid to the Homeowner after receiving an award are remitted to the Program in order to rectify a duplication of benefit.

Tie to the Storm: All projects implanted with HUD CDBG-DR funds must be in response to Superstorm Sandy, Hurricane Irene or Tropical Storm Lee.

Tier 1 (Target Area Assessment): Environmental assessment of a broad geographical area which is completed before the Tier 2, Site Specific Project Review.

Tier 2 (Site Specific Project Review): Environmental assessment of a specific project site. A Tier 2 must be successfully completed before funds for a specific project site may be obligated and spent.

Uniform Relocation Act (URA): A federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms.

Urgent Need Objective: Under the disaster recovery federal regulations, HUD has determined that an urgent need exists within the Presidentially Declared counties. An urgent need exists because existing conditions pose serious and immediate threat to health/welfare of community, the existing conditions are recent or recently became urgent (typically within 18 months), and the sub-grantee or state cannot finance the activities on its own because other funding sources are not available. All Homeowners which cannot meet the LMI National Objective will be placed into the Urgent Needs category.

Vulnerability: Vulnerability refers to the capacity of an asset to return to service after an event. It is one of the three factors identified in the risk assessment tool developed by the New York State Department of State for the NYRCR Program.

Women-Owned Business Enterprise (WBE): As defined by Article 15-A of the Executive Law, a women's business enterprise is business enterprise that is:

- At least 51 percent owned by one or more United States citizens or permanent resident aliens who are women;
- An enterprise in which the ownership interest of such women is real, substantial and continuing;
- An enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise;
- An enterprise authorized to do business in this State and which is independently owned and operated; and,
- An enterprise owned, either directly or through a holding company, by an individual or; and individuals, whose ownership, control and operation are relied upon for certification, with an individual personal net worth at the time of application that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year starting in 2011.

Exhibit 1 – Program Administrative Requirements and Cross-Cutting Federal Regulations

GOSR and its developers / subrecipients must adhere to all applicable State and federal laws, rules, and regulations. This section provides a summary of the significant and applicable federal regulations.

Americans with Disabilities Act (ADA) and Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in federally assisted Programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. The ADA prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and local government services, public accommodations, commercial facilities, and transportation. It also mandates the establishment of a telecommunications device for the deaf (TDD)/telephone relay services.¹⁵ GOSR takes affirmative steps to ensure that people with disabilities have equal access to the programs offered by GOSR, and that any aid, benefit or services are delivered in the most integrated manner possible. Qualified persons with disabilities are informed of the availability of programs, services and activities, and GOSR's programs, activities or services are readily accessible to, and usable by, individuals with disabilities. GOSR also ensures that reasonable accommodations or changes to policies, practices, or procedures are made to guarantee people with disabilities equal access to services and programs. Additionally, all programs, services and activities are accessible, both structurally and administratively, to persons with disabilities. GOSR's mandate to conform to the requirements of ADA flows down to all subrecipients, vendors and developers.

Section 504 requires that, for all new construction of multifamily rental projects with 5 or more units and/or substantial alterations of multifamily rental projects with 15 or more units, a minimum of 5 percent of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments. An additional 2 percent of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory impairments (i.e., hearing or vision impairments). In buildings with 5 or more dwelling units and at least one elevator, all dwelling units and all public/common use areas are subject to Section 504 requirements. In buildings with 5 or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to Section 504 requirements. In addition, Section 504 requires that federally funded new construction of non-housing facilities be designed and constructed to

¹⁵ http://www.ada.gov/2010_regs.htm

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be readily accessible and usable by individuals with handicaps, and that federally funded alterations to existing non-housing facilities do so to the maximum extent feasible.

The Architectural Barriers Act of 1968 (ABA) requires that certain buildings financed with federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS).

Davis-Bacon Act and Related Acts (DBRA)

The [Davis-Bacon Act¹⁶ and Related Acts \(DBRA\)](#) requires all subrecipients, contractors and subcontractors funded in whole or in part with CDBG-DR financial assistance through GOSR for the construction, alteration, or repair of public buildings or public works valued at more than \$2,000, except residential properties with less than 8 units , to pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. However, Davis-Bacon requirements do not apply to FAL. Davis-Bacon “labor standards clauses” must be included in covered contracts. In some cases, New York State Prevailing Wages and Davis-Bacon Prevailing Wages both apply. In such instances, the higher of the two prevails. Exceptions to DBRA include:

- Construction contracts of \$2,000 or less;
- Real property acquisition;
- Architectural and engineering (A/E) fees;
- Other services (such as legal, accounting, construction management);
- Other non-construction items (such as furniture, business licenses, real estate taxes);
- Rehabilitation of residential property designed for fewer than eight families; and
- Demolition and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction).

Subrecipients must work with GOSR to obtain both federal and New York State prevailing wage decisions for each project. After the bids are received, GOSR will verify the eligibility of the contractor to participate in the program.

¹⁶ 40 U.S.C. 3141 *et seq.*

Additionally, GOSR must follow the reporting requirements per HUD and Department of Labor (DOL) regulations. This requirement also extends to GOSR subrecipients and contractors.

The WCU within the MCD ensures that GOSR's applicable programs and services are in compliance with DBRA through the submission of weekly payrolls, site visits, and interviews with laborers.

New York State Prevailing Wages

In addition to DBRA applicability on GOSR construction projects, New York State prevailing wages may be applicable. Under New York State Labor Law¹⁷, contractors and subcontractors must pay the prevailing rate of wage and supplements (fringe benefits) to all workers under a public work contract. Employers must pay the prevailing wage rate set for the locality where the work is performed. Prevailing wage is the pay rate set by law for work on public work projects. This applies to all laborers, workers or mechanics employed under a public work contract.

Contract Work Hours & Safety Standards Act

The Contract Work Hours and Safety Standards Act¹⁸ (CWHSSA) applies to Federally financed (in whole or in part) contracts over \$100,000, and provides that workers be paid at least one and one-half times their basic rate of pay for any time worked in excess of 40 hours weekly. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages and for liquidated damages computed at \$10.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages.

The Copeland "Anti-Kickback" Act

The Copeland Anti-Kickback Act¹⁹ makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, reconstruction, completion, or repair of any public building, public work, or building, or work financed in whole or in part by Federal loans or grants, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports by all contractors and subcontractors.

Equal Employment Opportunity (EEO)

[Executive Order 11246](#), Equal Employment Opportunity (EEO), as amended, prohibits federal contractors and federally assisted construction contractors and subcontractors who

¹⁷ Article 8 New York State Labor Law Section 220

¹⁸ 40 U.S.C. Section 327 et seq.

¹⁹ 18 U.S.C. Section 874 as implemented in 29 Part 3
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do over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment.²⁰ This regulation is adhered to within GOSR programs, and covered contractors and subcontractors must submit an EEO policy statement, staffing plan, and quarterly reports to document compliance.

Fair Housing

The Fair Housing Act requires all grantees, subrecipients, and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their race, color, religion, familial status, national origin, sex, or disability. The Fair Housing Act contains requirements for the design of multifamily dwellings containing four or more attached units ready for first occupancy after March 13, 1991 to ensure accessibility to handicapped persons. Additionally, subrecipients, and/or developers funded in whole or in part by GOSR must also follow the New York State Human Rights Law, which covers all the same characteristics as the Federal Fair Housing Act, but offers additional protections based upon age, sexual orientation, marital status, and military status.

GOSR enforces the Fair Housing Act by ensuring that all grantees, subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements and provide a marketing plan and report on compliance in accordance with the Fair Housing Act and the associated forms on HCR's website, where applicable. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing Laws and demonstrate how the Applicant will affirmatively further fair housing throughout applicable GOSR disaster recovery programs. Additionally, GOSR and its Subrecipients maintain and report data on activity beneficiaries' and applicants' demographics for Fair Housing purposes, including race, ethnicity and head of household gender for direct-benefit activities' applicants and beneficiaries.

²⁰ 41 CFR Part 60.

Fair Labor Standards Act of 1938, as Amended (FLSA)

The Fair Labor Standards Act of 1938²¹, as amended (FLSA) establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week for non-exempt workers.²² These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project.

Limited English Proficiency (LEP)

[Federal Executive Order 131661](#) requires GOSR and all satellite offices, programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with LEP. GOSR ensures fair access through the implementation of a Language Assistance Plan (LAP) which includes non-English based outreach, translation of vital documents, free language assistance services, and staff training. GOSR's LEP Coordinator is responsible for coordinating all activities associated with the LAP, and the DCR monitors its implementation.

Minority- and/or Women-Owned Business Enterprises (M/WBE)

The Federal [Executive Order 12432](#) guidelines require selected federal agencies to promote and increase the utilization of MBEs. 2 CFR 200.321 requires the non-federal entity to take all necessary steps to ensure that all subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with certain federal funds, including CDGB-DR, ensure that contracts and other economic opportunities are directed to small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms when possible.

New York State is a national leader in requiring that public entities utilize MBE and WBE firms. Per state goals identified by the administration, for projects and agreements executed prior to January 30, 2015, GOSR ensures compliance by requiring, as applicable, subrecipients and contractors to make best efforts to achieve an overall M/WBE participation goal of 20% of the entire contract value consisting of 10% for MBE and 10% for WBE.

For all projects and agreements executed after January 30, 2015, GOSR will be required to make best efforts to achieve an overall M/WBE participation goal of 30% of the entire contract, consisting of 15% for MBE and 15% for WBE, per the increase in utilization targets put in place by New York State. GOSR follows the relevant requirements of NYS

²¹ 29 U.S.C. 201.

²² 29 U.S.C. 201.
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Executive Law Article 15-A regarding M/WBE participation. The DCR verifies M/WBE certification and the MCD monitors to ensure compliance with all reporting requirements. Where applicable, projects financed pursuant to an HCR competitive Request for Proposal (RFP) must comply with the M/WBE participation goals outlined in the RFP.

For all applicable projects, the DCR works with applicants and subrecipients to provide TA, guidance, and one-on-one support required to implement GFEs and meet applicable M/WBE thresholds.

Section 3

Section 3 of the Housing and Urban Development Act of 1968 requires grantees, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part by CDBG-DR funding, to the GEF, to extend hiring opportunities and contracts to Section 3 eligible residents and businesses, when a housing construction, housing rehabilitation or other public construction project or activity meets certain thresholds and criteria. Section 3 eligible residents are low- and very low-income persons, particularly those who live or reside in public or government-assisted housing. GOSR monitors contracts with subrecipients, contractors, subcontractors, and/or developers.

The DCR provides training, TA and one-on-one support for all projects, especially in terms of implementing best efforts to meet Section 3 goals. GOSR also monitors Section 3 goal attainment and provides additional on-the-ground support where required.

Residential Anti-Displacement

All subrecipients and developers must follow GOSR's Residential Anti-Displacement policy.

Uniform Relocation Assistance and Real Property Acquisition Act

CDBG-DR federal funds, administered by GOSR and disbursed to subrecipients and direct contractors and/or beneficiaries, are subject to the URA, as amended and/or Section 104(d) of the Housing and Community Development Act of 1974. The applicable federal regulations are located at 49 CFR Part 24 (URA), 24 CFR Part 42 (Section 104(d)), and in the Real Estate Acquisition and Relocation Policy and Guidance Handbook (HUD Handbook 1378).

Section 104(d) requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses. The March 5, 2013 FRN (FR-5696-N-01) waived the one-for-one replacement requirements at Section 104(d)(2)(A)(i)-(ii) and (d)(3) and 24 CFR 42.375 for units that meet the State's definition of "not suitable for rehabilitation," as established in the State's Action Plan.

Subrecipients or contractors must provide the following to households or entities (businesses, farms and non-profit organizations) that they displace:

- Required relocation notices, including General Information Notice, Notice of Non-displacement (for temporary relocations), and Eligibility Notice;
- Relocation advisory services;
- A minimum of 90 day notice to vacate;
- Reimbursement for moving expenses, and in the case of non-residential displacement, reestablishment expenses; and
- Payments for added cost of renting or purchasing comparable replacement housing for residential displacements.

In cases involving the involuntary acquisition of real property, as defined by 49 CFR 24.101 (b), Subrecipients or contractors must provide the following benefits to the property owner:

- Appraise property before negotiations
- Invite the property owner to accompany the appraiser during the property inspection
- Provide the owner with a written offer of just compensation and a summary of what is being acquired
- Pay for property before possession
- Reimburse expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.

Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended, 42 U.S.C. §5181 (“Stafford Act”) provides that:

“Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [Uniform Act] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such [Uniform Act].”

GOSR programs subject to the URA and Section 104(d) include the CDBG-DR programs. GOSR policies and procedures, NOFAs, applicant certifications and/or written agreements for funds subject to the URA and Section 104(d) shall refer to Federal and State rules, as appropriate.

Real Property

If CDBG-DR funds are used to acquire real property, where applicable, GOSR ensures that the property is used for its intended (and approved) purpose. If the property is sold under the SRA, the sale proceeds will be treated as Program Income pursuant to Section 3.13.7.

This fairly straightforward proposition about the ownership, use, management, and disposition of property is complicated by two facts. First, the rules about property management and disposition differ slightly depending on whether a grantee is a public-sector grantee. (The rules are generally more explicit for governmental grantees). Second, the rules depend on the nature of the property. Real property (e.g., land, buildings) is treated differently than personal property (e.g., equipment, supplies, intangible property like copyrights). (Property Management and Disposition Regulations 24 CFR 570.503; all subrecipients (subs) 24 CFR 85.32; 85.34, govt. subs 24 CFR 84.32; 84.34, nonprofit subs).

The federal requirements relating to property are organized according to title (ownership), use, and disposition. In general, the property management system must provide for accurate records, the performance of regular inventories, adequate maintenance and control, and proper sales procedures. Grantees must follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return.

Financial Management

Pursuant to Public Law 113-2, GOSR maintains and has in place proficient financial controls. The GOSR Internal Audit Department (IAD) exists to examine and evaluate the adequacy and effectiveness of the organization's governance and risk management. IAD plans and considers controls necessary to mitigate risks associated with program and administrative operations, internal and external reporting, and regulatory compliance. Risks of fraud, waste, and abuse are additionally considered throughout assignments.

MCD and IAD ensure that GOSR, as the grantee, as well as those administering CDBG-DR funds, continuously demonstrate conformity to financial management requirements as required by FR-5696-N-01. These requirements include, but are not limited to, areas covering: Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; Lump Sum Drawdowns; and 2 CFR Part 200, Subpart F. GOSR's financial management system will be consistent with and in compliance with 24 CFR Parts 84, 85, and 570 (as applicable, and as superseded by 2 CFR 200), which ensures that GOSR funds are managed with high levels of accountability and transparency.

GOSR's Financial Management practices adhere to the following:

1. Internal controls are in place and adequate;
2. Documentation is available to support accounting record entries;
3. Financial reports and statements are complete, current, and reviewed periodically; and
4. Audits are conducted in a timely manner and in accordance with applicable standards.

Procurement Policy

GOSR has established and adopted a procurement policy that meets State and federal requirements. The MCD and IAD ensure that GOSR adheres to its established policies.

Record Keeping, Retention, and File Management

In accordance with HUD regulations, GOSR as a grantee and recipient of CDBG-DR funds follow the records retention as cited in 24 CFR 84.53 (as amended by 2 CFR 200.333), which includes financial records, supporting documents, statistical records, and all other pertinent records. GOSR must maintain records for a period of six years from the time of closeout of HUD's grant to the State. Further, GOSR established record keeping and retention requirements in its subrecipient and contractor agreements in accordance with the guidelines established in 24 CFR 570.503(b)(2). For all subrecipients and developers, their retention of records shall be kept in accordance with 24 CFR 85.42, as modified by 24 CFR 570.502(a)(7), which requires for records to be maintained at least for a period of three years from the time of closeout of HUD's grant to the State or for six years after the closeout of a CDBG-DR funded project, whichever may be longer. GOSR maintains records in accordance with recordkeeping requirements cited in 24 CFR 570.490(a)(1) (as amended by 2 CFR 200), in order to facilitate a review or audit by HUD. Additionally, every subrecipient and contractor is required to establish and maintain at least three major categories of records: Administrative, Financial, and Project Case files.

Administrative records: These are files and records that apply to the overall administration of the subrecipient's CDBG-DR activities. They include the following:

- Personnel files;
- Property management files;
- General program files: Files relating to the subgrantee, partner's, or contractor's application to the grantee, the partner agreement, program policies and guidelines, correspondence with grantee and reports, etc.; and,
- Legal files: Articles of incorporation, bylaws of the organization, tax status, board minutes, contracts and other agreements.

Financial records: These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.

Project/case files: These files document the activities undertaken with respect to specific individual beneficiaries, property owners, and/or properties.

Reporting

As a recipient of CDBG-DR funds, GOSR established reporting requirements for all subrecipients and contractors in their respective subrecipient and contractor agreements and contracts in accordance with 24 CFR 570.503(b)(2). GOSR established its own reporting requirements in accordance with the provisions as found in 24 CFR 85.40(a) and (e) and 85.41(c) and (d) for Units of General Local Government (UGLGs) or 24 CFR 84.51(a) for non-profit subrecipients reporting requirements.

Generally speaking, GOSR monitors reporting requirements at five different program intervals:

1. At execution of agreements;
2. Monthly;
3. Quarterly;
4. Annually; and
5. As required.

Subrecipients, contractors, and developers submit the documents and reports to the State at the times indicated in the subrecipient and grant agreement, loan agreement and/or contract agreement, and in the format prescribed by GOSR staff. Deviations from this requirement must be approved by GOSR staff.

Record Retention

Record retention is a requirement of the Program. Records are maintained to document compliance with Program requirements and federal, State, and local regulations and to facilitate an audit review by HUD. GOSR will retain documents for six (6) years after closeout of the grant to the State, which ensures compliance with 24 CFR 570.490(d). For subrecipients, GOSR requires retention of all financial records, supporting documents, statistical records, and all other pertinent records (i) for three (3) years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (or other applicable laws and program requirements) and 24 CFR 570.488, or (ii) for six (6) years after the closeout of a CDBG-DR funded project pursuant to 42 USC 12707(a)(4) and New York Civil Practice Law and Rules § 213, whichever may be longer. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the retention period, then all such records must be retained until completion of the actions and resolution of all issues, or the retention period, whichever occurs later.

GOSR seeks to ensure that:

- Compliance with all requirements concerning records and records management practices under federal and State regulations;
- That the organization has the records it needs to support and enhance ongoing business and citizen service, meet accountability requirements and community expectations;
- These records are managed efficiently and can be easily accessed and used for as long as they are required; and
- These records are stored as cost-effectively as possible and when no longer required they are disposed of in a timely and efficient manner based on HUD Handbook 2225.6, Records Disposition Schedules and HUD Handbook 2228.2.

Access to Records

24 CFR 570.490 (as amended by 2 CFR 200.336) Recordkeeping requirements:

“(c) Access to records.

(1) Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

(2) The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.”

The availability of records is subject to the exemptions to public disclosure set forth in section 87(2) of the New York State Public Officers Law. All Freedom of Information Law (FOIL) requests under the Public Officers Law must be made in writing to the Records Access Officer and will be processed in accordance with the procedures set forth therein.

Audit Trail

All records defined by the organization as important are captured into GOSR’s recordkeeping systems (e.g., SharePoint, Intelligrants, Tribuo, Elation, Imarc, GSP, etc.) so they can be appropriately managed.

Elation Systems, Inc. is a provider of diversity and labor compliance reporting and management services. GOSR has adopted this cloud-based compliance management system to help all its contractors and subrecipients receiving Federal funds to adhere to

Labor Compliance (Davis-Bacon), M/WBE and Section 3 Federal reporting requirements. The Elation Systems application will serve as the system of record for all M/WBE, Section 3, Davis-Bacon, and EEO report submissions from GOSR subrecipients and direct contractors.

Recordkeeping, including scanning, uploading to GOSR's management information system, and filing of pertinent Program documentation retention policies are to provide a physical and/or electronic record of activities so that documentation is accessible for audit purposes.

GOSR Organizational Systems and Performance, working in collaboration with NYS ITS, has instituted several measures to protect non-public personal information and other forms of data. These measures apply to all in-house systems and any data that is being stored in GOSR's data warehouse. For example, the use of encryption of sensitive data fields (i.e. SSN, Bank Account and routing information) in the data warehouse. Access to this data is granted only to those assigned a 'personally identifiable information' user access role, and this role is granted upon request from authorized GOSR personnel.

GOSR also manages a monthly access validation process, the User Access Protocol. It requires all GOSR direct vendors and their subcontractors to review the Master User List for their organization and confirm that the list accurately and completely reflects all of their employees working on GOSR-related activities that should have access to GOSR systems. Once a quarter, as an additional security check, this list is checked against GOSR's active Directory and the library of signed non-disclosure agreements that are required prior to receipt of access credentials to GOSR systems.

GOSR also requires that active, office use, hard copy files containing non-public personal information be kept in locked file cabinets to ensure their physical security.

Conflicts of Interest and Confidentiality

Conflicts of interest between subrecipients, program administrators, contractors, program staff, and other parties are strictly prohibited by federal law.

A "covered person" is an employee, agent, consultant, officer, or elected or appointed official of the State, or of a unit of general local government, or any designated public agencies, or subrecipients that are receiving CDBG-DR funds. Generally, no person who is a covered person, and who exercises or has exercised any functions or responsibilities with respect to CDBG-DR activities and who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for

themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Conflicts of Interest

The Program requires all Program staff to disclose any relationship with a subrecipient or contractor. State program staff, subrecipients, program administrators, and contractors who disclose such relationships are placed in roles where there is no opportunity for them to display favoritism or collude in order to financially or otherwise benefit themselves or the contractor, for example, a Customer Representative may not perform work on the application of family. For purposes of this regulation, “family” is defined to include spouse, parents, mother-in-law, father-in-law, grandparents, siblings, brother-in-law, sister-in-law, and children of an official covered under the CDBG conflict of interest regulations at 24 CFR 570.489(h) (as superseded by 2 CFR 200).

GOSR may consider granting an exception to the conflict of interest provisions per 24 CFR 570.489(h)(4) (as superseded by 2 CFR 200) if GOSR has determined that the subrecipient has adequately and publicly addressed all of the concerns generated by the conflict of interest and that an exception would serve to further the purposes of Title I of the Housing and Community Development Act of 1974, as amended and the subrecipient has complied with the requirements listed in 24 CFR 570.489(h)(4)(i) and (ii) (as superseded by 2 CFR 200). GOSR considers whether the exception provides a significant cost benefit or an essential degree of expertise; whether the opportunity was provided for under open competitive bidding or negotiation; whether the person affected is a LMI person; whether the affected person has withdrawn from his or her functions or responsibilities; whether the interest or benefit was present before the affected person was in a position to benefit from the conflict of interest; or whether undue hardship results from failure to grant the exception.

Confidentiality/Privacy

The Program is committed to protecting the privacy of all of our individual stakeholders, including the public and those individuals working on the Program.

Any personal information collected by the Program is covered by the Federal Privacy Act of 1974, the Personal Privacy Protection Act (NYS POL §95, et. seq.) and the State’s Public Housing Law (see, PHL §159), among others. These laws provide for confidentiality, and restrict the disclosure of confidential and personal information. Unauthorized disclosure of such personal information may result in personal liability with civil and criminal penalties. The information collected may only be used for limited official purposes, including:

1. NY CDBG-DR Grant Program may use personal information throughout the award process to ensure compliance with program requirements, reduce errors and mitigate fraud and abuse.

2. Independent Auditors, when hired by the Program to perform a financial or programmatic audit of the Program, for use in determining program compliance with all applicable HUD and federal regulations, including the Stafford Act, CDBG-DR requirements and State and Local law.
3. NY CDBG-DR Program may disclose personal information on an Applicant to those with official Power of Attorney for the Applicant or for whom the Applicant has provided written consent to do so.
4. Organizations assisting the State in executing the CDBG-DR Program must comply with all Federal and State Law Enforcement and Auditing requests. This includes, but is not limited to, HUD, FEMA, FBI, NYS Office of the Comptroller, and the Office of the Inspector General.

Recapture Policy

HTFC, under the Division of HCR through GOSR is responsible for ensuring that CDBG-DR funds awarded by HUD through New York Rising comply with all federal, state and local requirements.

In order to ensure that New York State is able to fulfill its contractual obligations to HUD, and that the subrecipients receiving CDBG-DR assistance are using the funds for their intended purpose, GOSR requires all subrecipients to sign SRA stipulating each party's responsibilities and the potential penalties if the subrecipient is found not to have fulfilled their obligations. Specifically, if the funds are not used for eligible activities, the money can be recaptured.

To monitor operations and to guard against fraud or unintentional violations of program requirements, GOSR has established quality control procedures. If a program violation is identified, the State recaptures funds in accordance with its recapture procedure.

Exhibit 2 – Citizen Participation Plan

Citizen Participation Plan **Community Development Block Grant Disaster Recovery** **Hurricane Irene, Tropical Storm Lee, & Superstorm Sandy**

The primary goal of the New York Citizen Participation Plan is to provide all New York citizens with an opportunity to participate in the planning, implementation, and assessment of the State's CDBG-DR Sandy recovery program(s). The Plan sets forth policies and procedures for citizen participation, which are designed to maximize the opportunity for citizen involvement in the community redevelopment process. New York State developed the Citizen Participation Plan to meet the requirements of the CDBG Disaster Recovery (CDBG-DR) funding for Superstorm Sandy, Hurricane Irene, and Tropical Storm Lee. The Plan reflects the alternative requirements as specified by the U.S. Department of Housing and Urban Development (HUD) in the Federal Register (FR-5696-N-01), Federal Register (FR-5696-N-06), Federal Register (FR-5696-N-11), and notice of specific waivers.

The State will ensure that any UGLG or sub-recipients who receive funds will have a Citizen Participation Plan that meets the CDBG-DR regulations and takes into consideration the waivers and alternatives made available under CDBG-DR funding.

In order to facilitate citizen participation requirements and to maximize citizen interaction in the development of the New York Disaster Recovery Action Plan, substantial amendments to the Action Plan, and the Quarterly Performance Reports (QPR), the State has laid out targeted actions to encourage participation and allow equal access to information about programs by all citizens, including LMI persons, persons with disabilities, the elderly population, persons receiving Disaster Housing Assistance Program (DHAP) funding, and persons with LEP.

Public Outreach

GOSR is committed to ensuring that all populations impacted by the storms are aware of the programs available to assist in the recovery from Hurricane Irene, Tropical Storm Lee, and Superstorm Sandy. Through in person meetings, outreach events, online and traditional media, GOSR has publicized programs and conducted outreach efforts throughout the storm impacted areas. In addition, the Governor initiated the NYRCR Program, a grass-roots community driven process that engages the public as a key stakeholder in the planning and rebuilding process. Through 61 cross-jurisdictional Planning Committees representing 119 communities, the NYRCR stakeholders helped to inform their communities about the available recovery programs as they came online.

Programmatic Outreach

Through the NYRCR Program, there have been over 650 Planning Committee meetings to construct a vision statement; to conduct an inventory of critical assets and an assessment of risks; and then ultimately to craft the strategies, and proposed projects or actions to

address these risks. All meetings were open to the public and were publicized by media advisories, flyers, and posters hung in public buildings; radio announcements; and through social media. Where necessary, meetings were advertised in various languages to ensure the immigrant population was informed. Translators were also present at meetings so that information was clearly understood. For the hearing impaired, sign language interpreters were also available.

More than 240 Public Engagement Events attracted thousands of community members, who provided feedback on the NYRCR planning process and proposals and made additional suggestions. Planning Committees members were instrumental in representing communities that are traditionally underrepresented in disaster recovery, from engaging immigrant populations to working with high school students. Committee members made presentations at senior housing complexes, religious gatherings, schools, and at Chambers of Commerce.

For the Small Business program, GOSR worked in coordination with the Empire State Development Corporation (ESD) as well as its sub-recipient, SBDC to create a multi-pronged approach to reach out to more than 3,000 businesses in the impacted communities has included paid advertising, door-to-door visits, press releases and other public relations efforts, and collaboration with various constituents and community organizations.

For the NY Rising Homeowner Program, early on the State partnered with the Long Island Housing Partners to target community outreach including but not limited to, persons with disabilities and other special needs, and senior households, with a focus on low- and moderate- income minority communities; outreach to and coordination with civic associations, religious and advocacy groups (racial equity), social service agencies, emergency aid not-for profits, educational institutions, and outreach to residences impacted by the disaster.

The State's vendors on the project also held numerous meetings to inform the public about the availability of grants for home repairs. This outreach consisted of a variety of methods: media announcements, online updates on the Storm Recovery website and through Storm Recovery profiles on social media platforms including Facebook, Twitter, and Instagram, community meetings, and partnerships with sub-recipients. Additionally, staff frequently made presentations to community groups, specifically in Long Island, to provide updated program information. A similar effort has been conducted in counties in upstate New York to make sure that all impacted homeowners have the most up to date information about the program. In addition, frequent TA meetings were held with applicants to assist homeowners in better understanding the program and completing the rebuilding process successfully.

Further the State also engaged the Welfare Council of Long Island/Long Island Long-Term Recovery Group (LTRG) to conduct targeted outreach to LMI persons who were affected by the Superstorm Sandy, in order to encourage these individuals to apply to the NY Rising Housing Recovery Assistance Program before the April 11, 2014 deadline.

For its rental programs, the State will continue to conduct outreach to potential landlords throughout the impacted areas that may be eligible for the program. As part of its implementation, the State will also conduct outreach to previous tenants of the damaged rental units to make them aware of potential repaired and newly built units as they are completed.

Outreach to Vulnerable Populations

The State has also conducted outreach to residents with more acute needs, particularly LMI household and households headed by non-English speaking persons. As noted above, within the NYRCR program, where necessary, meetings were advertised in various languages to ensure the immigrant population was informed. Translators were also present at meetings so that information was clearly understood. For the hearing impaired, sign language interpreters were also available.

As the State continues to implement programs and work with communities to recover from Hurricane Irene, Tropical Storm Lee and Superstorm Sandy, GOSR is committed to continued outreach and program accessibility to vulnerable populations and ensuring that program information is accessible to populations with language barriers. For example, the APA is translated into Spanish, Russian and Chinese, which are the three languages most needed for persons with language barriers in impacted counties (based on the 2008-2012 ACS 5-Year Estimates, Table B16001, Populations 5 Years and Over Who Speak English less than “very well”).

Currently documents are translated into the three above-mentioned languages. The State will continue to translate programmatic materials within its programs. The State will also continue to provide translation services as needed in case management and public meetings.

The State is in the process of upgrading its entire website. In the interim, prior to deployment of the revised website, the State continues to update its current website to enable language access capabilities. In addition, as it rolls out the revised website, the State will prioritize language translation functionality as one of the first phases of the development process. The State will also provide translation of any document into additional languages, braille, or any other formats for persons with visual impairments upon request.

The State continues to further these efforts to reach out to all populations and ensure that the community is educated and aware of all of the recovery programs. As programs adjust and move into new phases, the State will continue to adjust their public outreach to ensure comprehensive outreach to all populations.

Public Notices, Public Hearings, and Comment Period

The State Citizen Participation Plan will ensure that there is reasonable and timely access for public notice and comment on the activities proposed for the use of CDBG-DR grant funds. In the Notices for the Second and Third Allocation HUD revised the requirements

for public hearings. The State will always hold a minimum of one public hearing for each substantial amendment which started with APA6. Written minutes of the hearings and attendance rosters will be kept for review by State officials. The State will continue to coordinate outreach meetings with State entities, local governments, non-profits, private sector, and involved associations. The State invited public comment to the New York Disaster Recovery Action Plan and will continue to invite public comment for any future Substantial Amendments for a minimum thirty days, posted prominently and accessed on GOSR's official website.

Substantial Amendments to the Action Plan

The State has defined Substantial Amendments to the Action Plan as those proposed changes that require the following decisions:

- Addition or deletion of any allowable activity described in the approved application;
- A Program allocation change that is both greater than \$5 million and more than 10 percent of a program allocation; and,
- Change in the planned beneficiaries.

Those amendments which meet the definition of a Substantial Amendment are subject to public notification, public hearings and public comment procedures. Citizens and UGLG will be provided with reasonable notice and an opportunity to comment on proposed Substantial Amendments to the Action Plan. A notice and copy of the proposed Substantial Amendment will be posted on the agency's official website. Citizens will be provided with no less than thirty days to review and comment on the proposed amendment. Written comments may be submitted to:

**Governor's Office of Storm Recovery
64 Beaver Street
P.O. Box 230
New York, New York 10004**

Comments may also be made at www.stormrecovery.ny.gov. A summary of all comments received and reasons why any comments were not incorporated into the Substantial Amendment will be included in the HUD request for a Substantial Amendment and posted. Non-substantial Amendments to the Action Plan will be posted on GOSR's website after notification is sent to HUD and the amendment becomes effective. Every Amendment to the Action Plan (substantial and non-substantial) will be numbered sequentially and posted on the website.

Performance Reports

The State must submit a Quarterly Performance Report through HUD's Disaster Recovery Grant Reporting (DRGR) system no later than thirty (30) days following the end of each calendar quarter. Within three (3) days of submission to HUD, each QPR must be posted on GOSR's official website for public review and comment. The State's first QPR is due

after the first full calendar quarter after the grant award. QPR's will be posted on a quarterly basis until all funds have been expended and all expenditures have been reported.

Each QPR will include information about the uses of funds in activities identified in the Action Plan as entered in the DRGR reporting system. This includes, but is not limited to: project name, activity, location, and National Objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG-DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes such as number of housing units complete or number of LMI persons benefiting; and the race and ethnicity of persons assisted under direct-benefit activities. The State must also record the amount of funding expended for each Contractor identified in the Action Plan. Efforts made by the State to affirmatively further fair housing will also be included in the QPR.

During the term of the grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the approved program and to the grantee's use of grant funds as well as contracts procured with CDBG-DR funding. This information shall be posted on the grantee's official website and provided on request.

Technical Assistance

The State will provide TA to facilitate citizen participation where requested, particularly to groups representative of persons of LMI and vulnerable populations. The level and type of TA shall be determined by the applicant/recipient based upon the specific need of the community's citizens.

Citizen Participation Requirements for Sub-recipients and Local Governments Participating in CDBG-DR Programs

To ensure applicant compliance with Section 508 of the Housing and Community Development Act of 1974, as amended, the citizen participation requirements for UGLG applying for or receiving DR funds from the State are as follows:

Each applicant shall provide citizens with adequate opportunity to participate in the planning, implementation, and assessment of the CDBG program. The applicant shall provide adequate information to citizens, obtain views and proposals of citizens, and provide opportunity to comment on the applicant's previous community development performance.

UGLGs receiving CDBG-DR funds must have a written and adopted Citizen Participation Plan which:

- Provides for and encourages citizen participation, with particular emphasis on participation by persons of low- and moderate-income who are residents of slum and blighted areas and of areas in which funds are proposed to be used;

- Provides citizens with reasonable and timely access to local meetings, information, and records relating to the State's proposed method of distribution, as required by regulations of the Secretary, and relating to the actual use of funds under Title I of the Housing and Community Development Act of 1974, as amended, and the unit of local government's proposed and actual use of CDBG funds;
- Provides for TA to groups representative of persons of low- and moderate-income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;
- Provides for the review of proposed activities and program performance by potential or actual beneficiaries, and with accommodations for the disabled;
- Provides for a timely written answer to written complaints and grievances, within 15 working days where practicable;
- Identifies how the needs of non-English speaking residents will be met where a significant number of non-English speaking residents can be reasonably expected to be involved;
- Establishes procedures and policies to ensure non-discrimination, based on disabilities, in programs, and activities receiving Federal financial assistance as required by Section 504 of the Rehabilitation Act of 1973, as amended.

The plan must be made available to the public and must include procedures that meet the following requirements:

- *Performance Hearings:* Prior to close out of the disaster recovery program, the Program, the UGLG and State sub-recipients may be required to hold a public hearing to obtain citizen views and to respond to questions relative to the performance of the program. This hearing shall be held after adequate notice, at times and locations convenient to actual beneficiaries and with accommodations for the disabled and non-English speaking persons provided. Written minutes of the hearings and attendance rosters will be kept for review by State officials. Nothing in these requirements shall be construed to restrict the responsibility and authority of the applicant for the development of the application.
- *Complaint Procedures:* The State will ensure that each UGLG, or as appropriate, Sub-recipient funded with CDBG-DR funds will have written citizen and administrative complaint procedures. The written Citizen Participation Plan shall provide citizens with information relative to these procedures or, at a minimum, provide citizens with the information relative to the location and hours at which they may obtain a copy of these written procedures. All written citizen complaints which identify deficiencies relative to the UGLG, Sub-recipient's community development program will merit careful and prompt consideration. All good faith attempts will be made to satisfactorily resolve the complaints at the local level. Complaints will be filed with the Executive director or chief elected official of the entity who is receiving the funds and who will investigate and review the complaint. A written response from the Chief Elected Official, Agency Head, or Executive Director to the complainant will be made within 15 working days, where

practicable. A copy of the complaint and determination must be sent to GOSR's head of Monitoring and Compliance.

Exhibit 3 – Community Reconstruction Program’s Code of Conduct

Section 1. Definitions

(a) Definitions. For the purpose of this Code of Conduct, the following terms shall be defined as follows:

(i) “controlling person” means any person who by reason of a direct or indirect ownership interest (whether of record or beneficial) has the ability, acting either alone or in concert with others with ownership or membership interests, to direct or cause the direction of the management or policies of a corporation, partnership, limited liability company or other entity.

- (ii) “covered person” means a voting member of the committee who is also:
- (1) an employee, agent, consultant, or officer of unit of state or local government that is currently receiving Community Development Block Grant (CDBG) funds² (other than those funds Communities stand to receive through the NYRCR Program);
 - (2) an employee agent, consultant, or officer of a public agency currently receiving CDBG funds (other than those funds Communities stand to receive through the NYRCR Program); or
 - (3) an employee, agent, consultant, or officer of a subrecipient currently receiving CDBG funds (other than those funds Communities stand to receive through the NYRCR Program).

(iii) “family member” means (whether by blood, marriage or adoption) a member’s spouse, domestic partner, parent (including stepparent), child (including stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, or in-laws. The term “family member” shall also mean any relative of the member living in the member’s household.

(iv) “member” means a member, whether voting or non-voting, Co-Chair or not, of a NY Rising Community Reconstruction Program Planning Committee. Individuals holding or campaigning for elected public office are ineligible to be voting committee members; however, these individuals may participate in the committee process as non-voting committee members. Anyone actively campaigning for his or her self, whether officially registered as a candidate or not, shall be considered a candidate for office, at the discretion of the NYRCR Director, Regional Lead, and Ethics Officer.

Section 2. Code of Ethics

(a) Members of each NY Rising Community Reconstruction Program Planning Committee (“Committee”) should exercise their duties and responsibilities as members in the public interest of the inhabitants of the State, regardless of their affiliation with, or relationship to, any business, municipality, non-profit, agency, program, or interest

group. The principles that should guide the conduct of members include, but are not limited to the following:

(i) A member should endeavor to pursue a course of conduct that will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust as a member.

(ii) No member should permit his or her employment or relationship with any entity that might benefit from the decisions made by the Committee to impair his or her independence of judgment in the exercise of his or her duties as a member.

(iii) No member should disclose confidential information acquired by him or her in the course of his or her duties as a member or by reason of his or her position as a member or use such information to further his or her personal interests.

(iv) No member should use or attempt to use his or her position as a member to secure unwarranted privileges or exemptions for him or herself or others.

(v) No member should engage in any transaction with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her duties as a member.

(vi) A member should refrain from making personal investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her as a Committee member or which will otherwise create substantial conflict between his or her duty as a Committee member to act in the public interest and his or her private interest.

Section 3. Potential Conflicts of Interest and Possible Disqualification

(a) Overview. When voting members are faced with a potential conflict of interest as described in subsection (b) of this section below, they must disclose the potential conflict of interest to the NYRCR Program Ethics Officer as provided for under subsection (c) of this section, also found below. In the event a member does not voluntarily disqualify themselves from voting on a particular Proposed Project or Featured Project that poses a potential conflict of interest, they must seek an opinion from the NYRCR Program Ethics Officer. Only with the prior written approval of NYRCR Program Ethics Officer may a member vote on a Proposed Project or Featured Project that poses a potential conflict of interest.

(b) Potential Conflicts of Interest. Voting members must disclose any potential conflicts of interest that exist between themselves and their voting on a Proposed Project or Featured Project for inclusion in the NYRCR Plan. A potential conflict of interest exists when due to the nature of a Proposed Project or Featured Project:

(i) a member, a member's family member, or a member's business associate stands to receive a benefit, either directly or indirectly;

(ii) a business entity, non-profit organization, or enterprise in which a member, a member's family member, or a member's business associate is an owner, officer, director, controlling person, fiduciary, employee, or consultant stands to receive a benefit, either directly or indirectly;

(iii) the member, a member's family member, or a member's business associate has an interest or association which might reasonably be construed by the public as a conflict of interest given the member's position on the Planning Committee; or

(iv) a unit of local government or government agency in which the member is an employee, officer, or director stands to receive a direct benefit.

(c) Procedure for Possible Disqualification. All voting members must submit a completed Acknowledgement of Receipt and Review form (attached below) to the NYRCR Program Ethics Officer via email (Ethics@stormrecovery.ny.gov) prior to voting on Proposed Projects or Featured Projects to be contained in the NYRCR Plan. Voting members must attach (either by attachment or email text) descriptions of all potential conflicts of interest, as described in subsection (b) of this section, posed by any Proposed Project or Featured Project to the Acknowledgement of Receipt and Review form. For each Proposed Project or Featured Project that poses a potential conflict of interest, the potentially conflicted member must indicate on the form attachment that they either (1) voluntarily disqualify his or her self from voting on that particular matter, or (2) request an opinion from the NYRCR Program Ethics Officer as to whether disqualification is necessary in accordance with subsection (d) of this section found below.

(d) Ethics Opinion. If a member chooses to request an opinion from the NYRCR Program Ethics Officer authorizing them to vote on a particular Proposed Project or Featured Project, the request must include a detailed description of the potential conflict, including relevant information, as appropriate, such as:

(i) the nature of the benefit giving rise to the conflict;

(ii) the nature of the relationship between the member and the individual or entity that stands to receive a direct or indirect benefit;

(iii) whether other similarly situated individuals or entities stand to receive a similar benefit; and

(iv) any other relevant considerations.

The NYRCR Program Ethics Officer will determine whether a member must disqualify his or her self from voting on a Proposed Project or Featured Project on a case-by-case basis. If necessary, the NYRCR Program Ethics Officer may request additional

information from a member. The NYRCR Program Ethics Officer shall disqualify a member from voting on a Proposed Project or Featured Project if, in the discretion of the NYRCR Program Ethics Officer, such member's participation would likely undermine the credibility of the Committee or would create the public perception of impropriety. Determinations by the NYRCR Program Ethics Officer are final.

(e) All disclosures made by a member pursuant to this Code of Conduct shall be kept confidential; however, the NYRCR Program Ethics Officer may disclose the fact that disqualification is necessary with regard to individual Proposed Projects or Featured Projects to the NYRCR Regional Leads. In turn, NYRCR Regional Leads may communicate that disqualification is necessary to the NYRCR Planning Committee members or Co-Chairs.

In no circumstance will the facts supporting such a determination be communicated without the express permission of the member.

Section 4. Impermissible Conflicts Prohibited for Covered Persons and Absolute Disqualification

(a) Impermissible Conflicts Prohibited and Absolute Disqualification Required. No member who is a "covered person" may vote on a Proposed Project or Featured Project in which they stand to obtain or receive a financial interest or benefit from a proposed activity, or have a financial interest in any contract, subcontract, or agreement with respect to a proposed activity, or with respect to the proceeds of the proposed activity, either for themselves, a family member or those with whom they have business ties, during their tenure or for one year thereafter. Such a conflict shall be considered an impermissible conflict and subject any conflicted member to absolute disqualification from voting on that particular Priority or Featured project. When faced with an impermissible conflict subject to absolute disqualification, a member must disclose the conflict to the NYRCR Program Ethics Officer via email (Ethics@stormrecovery.ny.gov), and shall refrain from voting on the NYRCR Plan with respect to the project or action giving rise to such a conflict.

(b) A member who is a covered person subject to absolute disqualification under subsection (a) of this section may submit a written request for an exception (waiver) to the prohibition and requirements of subsection (a) of this section to the NYRCR Program Ethics Officer, disclosing the nature of the conflict. Waivers will not be granted retroactively. In considering whether an exception will be granted, the following factors will be considered:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the member is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class; (iv) Whether the member has withdrawn from his or her functions or responsibilities or the decision-making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the member was conflicted;

(vi) Whether undue hardship will result either to the recipient or member when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

Section 5. Miscellaneous

(a) Ethics Officer. Questions concerning this Code of Conduct can be sent to the NYRCR Program Ethics Officer at Ethics@stormrecovery.ny.gov.

(b) Breach. A Committee Member found to be in breach of the provisions of this Code of Conduct may be removed from the Committee by the Director of NYRCR Program.

(c) The Director of the NYRCR Program may disqualify any member from voting on any matter for any reason, in his or her sole discretion.

(d) Attendance. Committee Members are expected to attend Committee Meetings and Public Engagement Meetings. Each Committee will decide the appropriate number of excused absences for Committee Members. Committee Members absent for more than the agreed upon excused absences may be removed from the Committee.

(e) Acknowledgement. All Committee Members must execute an Acknowledgement of Receipt and Review, in the form provided by the NYRCR Program. The Acknowledgement of Receipt and Review form is located at the end of this Code of Conduct.